

TITLE XV: LAND USAGE

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CHAPTER 150: BUILDING REGULATIONS; CONSTRUCTION

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GENERAL PROVISIONS

§ 150.01 TITLE.

This chapter and all regulations supplemental or amendatory hereto shall be known as the Building Code of the Town of Spencer, and may be cited as such and will be referred herein as this chapter.

(Prior Code, Ch. 12, Art. 12.01(A))

§ 150.02 PURPOSE.

The purpose of this chapter is to provide minimum standards for the protection of life, limb, health, environment, public safety and welfare, and for the conservation of energy in the design and construction of buildings and structures.

(Prior Code, Ch. 12, Art.12.01(B))

§ 150.03 AUTHORITY.

The Building Commissioner is hereby authorized and directed to administer and enforce all of the provisions of this chapter. Whenever in this chapter, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or other officer designated by the Building Commissioner, it shall be construed to give the officer only the discretion of determining whether the rules and standards established by ordinance have been complied with. No provision shall be construed as giving any officer discretionary powers to require conditions not prescribed by ordinance or state codes, or to enforce ordinance provisions in an arbitrary or discriminatory manner.

(Prior Code, Ch. 12, Art.12.01(C))

§ 150.04 SCOPE.

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The provisions of this chapter apply to the construction, alteration, repair, use, occupancy, maintenance, and addition to all buildings and structures, other than industrialized building systems or modular structures certified under I.C. 22-15-4, in the Town of Spencer. See Local Regulations Concerning Setbacks and §§ 31.20 *et seq.* and §§ 152.001 *et seq.* which cover the Zoning in the Town of Spencer.

(Prior Code, Ch. 12, Art. 12.01(D))

§ 150.05 DEFINITIONS.

(A) The definitions set forth in I.C. 22-12-1 of the following terms are hereby incorporated by reference in this chapter.

(B) For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

AGRICULTURAL PURPOSE. Farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry and poultry husbandry.

(I.C. 22-12-1-2)

BUILDING LAW. Any fire safety law, equipment law, or other law governing any of the following:

(a) Fabrication of an industrialized building system or mobile structure for installation, assembly, or use at another site;

(b) Construction, addition, or alteration of any part of a Class 1 or Class 2 structure at the site where the structure will be used; and

(c) Assembly of an industrialized building system or mobile structure that is covered by neither subdivision (1) nor (2) above.

(I.C. 22-12-1-3)

CLASS 1 STRUCTURE.

(a) Any part of the following:

1. A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:

a. The public;

b. Three or more tenants; and/or

c. One or more persons who act as the employees of another.

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2. A site improvement affecting access by the physically handicapped to a building or structure described in division (a)1.a. above.

3. Any class of buildings or structures that the Commission determines by rules to affect a building or structure described in division (a)1 above, except buildings or structures described in divisions (b) through (e) below.

(b) Division (1)(a) above includes a structure that contains 3 or more condominium units (as defined in I.C. 32-25-2-9) or other units that:

1. Are intended to be or are used or leased by the owner of the unit; and
2. Are not completely separated from each other by an unimproved space.

(c) Division (1)(a) above does not include a building or structure that:

1. Is intended to be or is used only for an agricultural purpose on the land where it is located; and

2. Is not used for retail trade or is a stand used for retail sales of farm produce for 8 or less consecutive months in a calendar year.

(d) Division (a)1. above does not include a Class 2 structure.

(e) Division (a)1. above does not include a vehicular bridge.
(I.C. 22-12-1-4)

CLASS 2 STRUCTURE.

(a) Any part of the following:

1. A building or structure that is intended to contain or contains only 1 dwelling unit or 2 dwelling units unless any part of the building or structure is regularly used as a Class 1 structure; and

2. An outbuilding for a structure described in division (a) above, such as a garage, barn, or family swimming pool, unless any part of the outbuilding is regularly used as a Class 1 structure.

(b) Division (a) above, does not include a vehicular bridge.
(I.C. 22-12-1-5)

COMMISSION. The Fire Prevention and Building Safety Commission.
(I.C. 22-12-1-6)

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CONSTRUCTION. Any of the following:

- (a) Fabrication of any part of an industrialized building system or mobile structure for use at another site;
- (b) Erection or assembly of any part of a Class 1 or Class 2 structure at the site where it will be used;
- (c) Installation of any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication or fire or explosion suppression systems for a Class 1 or Class 2 structure at the site where it will be used; and
- (d) Work undertaken to alter, remodel, rehabilitate, or add to any part of a Class 1 or Class 2 structure; and
- (e) Work undertaken to relocate any part of a Class 1 or Class 2 structure, except a mobile structure.
(I.C. 22-12-1-7)

CONTROL. The authority to create, change, or eliminate a condition or to initiate, regulate or terminate conduct that is based on any of the following:

- (a) An agency, employment, or contractual relationship;
- (b) A possessory or non-possessory ownership or leasehold interest in property; and
- (c) A contractual right to possess or use property.
(I.C. 22-12-1-7)

DEPARTMENT. The Fire and Building Services Department.
(I.C. 22-12-1-9)

EQUIPMENT LAW. A statute or rule under this section, I.C. 22-13, or I.C. 22-15 that applies to the design, manufacture, fabrication, assembly, installation, alteration, repair, maintenance, operation, or inspection of a regulated amusement device, boiler, lifting device, or pressure vessel.
(I.C. 22-12-1-11)

FIRE SAFETY LAW. Any building law, equipment law, or other law safeguarding life or property from the hazards of fire or explosion.
(I.C. 22-12-1-13)

FIRE TERRITORY. The participating unit that is responsible for providing fire protection services within the territory established under I.C. 36-8-19.
(I.C. 22-12-1-12)

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INDUSTRIALIZED BUILDING SYSTEM.

(1) Any part of a building or other structure that is in whole or in substantial part fabricated in an off-site manufacturing facility for installation or assembly at the building site as part of a Class 1 structure, a Class 2 structure, or another building or structure.

(2) However, the term does not include a mobile structure or a system that is capable of inspection at the building site.

(I.C. 22-12-1-14)

LAW. Any statute, rule, ordinance or other regulation.

(I.C. 22-12-1-15)

MANUFACTURED HOME. As set forth in 42 U.S.C. §§ 5401 *et seq.* as it existed on January 1, 2007, a structure, transportable in one or more section, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle.

(I.C. 22-12-1-16)

MOBILE STRUCTURE.

(a) Any part of a fabricated unit that is designed to be:

1. Towed on its own chassis; and

2. Connected to utilities for year-round occupancy or use as a Class 1 structure, a Class 2 structure, or another structure.

(b) The term includes the following:

1. Two or more components that can be retracted for towing purposes and subsequently expanded for additional capacity; and

2. Two or more units that are separately towable but designed to be joined into 1 integral unit.

(I.C. 22-12-1-17)

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PERSON. An individual, corporation, partnership, unincorporated association, or governmental entity.
(I.C. 22-12-1-18)

STRUCTURE. Includes swimming pools, signs and sign supports and fences.
(I.C. 22-12-1-24) (Prior Code, Ch. 12, Art. 12.01(E))

§ 150.06 RULES; ADOPTED BY REFERENCE.

(A) The following rules, regulations and codes are hereby adopted by reference as the rules and regulations governing the construction and alternation of buildings and structures in the town, and these rules, regulations and codes shall include the most current editions thereof; as the same are published in the Indiana Register or the Indiana Administrative Code:

(1) State Building Code;

(2) State Building Code Standards;

(3) State Handicapped Accessibility Code;

(4) State Fire and Building Safety Standards (675 I.A.C. 13-1), originally published as 8 IR 1301 under that title, which incorporates by reference the National Fire Protection Association (NFPA) Standards;

(5) State Electrical Rules, IER, which identifies, amends and incorporates therein the National Electric Code, NEC;

(6) State Safety Code for Health Care Facilities, which identifies, amends and incorporates therein National Fire protection Association (NFPA) Standard, NFPA 99;

(7) State Plumbing Code, which identifies, amends and incorporates therein the Uniform Plumbing Code;

(8) State Mechanical Code, which identifies, amends and incorporates therein the Uniform Mechanical Code;

(9) State Flammable and Combustible Liquids and Gases Code, which identifies, amends and incorporates therein 8 National Fire Protection Association Standards;

(10) One and 2 family dwelling code of the state, which identifies, amends and incorporates therein the 1 and 2 Family Dwelling Code;

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(11) State Energy Conversation Code, which identifies, amends and incorporates therein the model Energy Code; and

(12) State Swimming Pool Code.

(B) Copies of this code and rules, regulations and codes adopted herein by reference, are on file as required by law in the office of the Town Building Inspector.
(Prior Code, Ch. 12, Art. 12.01(F))

§ 150.07 SETBACK REQUIREMENTS.

(A) All buildings and structures shall be built, constructed, erected, set and/or placed on private and/or public property according to the requirements on setbacks established in this section.

(B) When applicable, all setbacks shall be measured from the inside of the sidewalk and/or street, road, alley or other public right-of-way. The “inside” shall mean the side towards or closest to the building or structure that is subject to the setback requirement.

(C) Setback from property lines shall be measured from the property line. The property line shall be that point where one person (s), firm(s), company(s), corporation(s), association(s), government(s) or other entity(s) real property begins.

(D) The following setback requirements apply in all applicable zoning districts.

(1) *Sidewalks.* Where there are established and existing sidewalks, the minimum setback from the sidewalk shall be measured from the inside of the sidewalk:

(a) All residential buildings or structures: 5 feet.

(b) All commercial and/or business buildings or structures: 10 feet.

(c) All industrial buildings or structures: 10 feet.

(d) All other buildings and structures: 10 feet.

(2) *No sidewalks.* Regardless of the building or zoning classification where there are no established or existing sidewalks, the minimum setback from the street, road, or other public right-of-way shall be 15 feet and shall be measured from the inside of the street, road or other public right-of-way. The minimum setback requirement for a building or structure from an alley shall be 3 feet from the public right-of-way.

(3) *Property lines.*

(a) All residential buildings or structures: 5 feet.

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(b) All other buildings or structures regardless of building or zoning classification: 10 feet.

(4) *Fences.*

(a) Property lines fences may be built on the property line.

(b) All other locations:

1. Fences shall be installed and/or erected at least 6 inches from the inside of all established and existing sidewalks.

2. Where no sidewalk(s) exist, fences shall be installed and/or erected at least 10 feet measured from the inside of the street, road or other public right-of-way.

3. In alleys, fences shall be installed and/or erected 3 feet from the public right-of-way.

(5) *Utilities.*

(a) Utilities shall be set back at least 2 feet from the inside of all established and existing sidewalks.

(b) Where no sidewalks exist, utilities shall be set back at least 12 feet measured from the inside of the street, road or other public right-of-way.

(c) From an alley, utilities shall be set back at least 3 feet measured from the public right-of-way.

(d) This minimum distance shall be measured from the outer-most part of the utility.

(e) Utility in this subsection includes but is not limited to poles, towers, lines, wires, conduits, pipes, drains, meters, valves, and pumps but does not include buildings, structures or hydrants.

(f) Hydrants fall under the jurisdiction of the Fire Department of the town pursuant to Indiana state law.

(6) *Other.*

(a) Any object that is not specifically mentioned elsewhere in this section including but not limited to the following: flag poles, antennas, towers, satellite dishes, playhouses, birdbaths and other yard ornaments, shall be set back:

1. A minimum of 0 feet from the property lines, 6 inches from existing sidewalks;

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2. A minimum of 10 feet from a road, street, or other public right-of-way where no sidewalk exists; and

3. A minimum of 3 feet from an alley measured from the public right-of-way.

(b) However, this provision shall not apply where the object is not anchored to the ground, is easily moved and weighs less than 50 pounds. This subsection does not apply to utilities identified in the subsection above.

(Ord. 1993-02, passed 4-5-1993)

BUILDING PERMITS

§ 150.20 APPLICATION FOR PERMIT.

(A) No permit shall be issued for the foregoing purposes, unless the application for the permit is accompanied by a plat or sketch of the proposed location showing lot boundaries, and by plans and specifications showing all the work to be done.

(B) All plans for commercial building construction are under the authority of the State Fire Prevention and Building Safety Commissioner and must also be filed with the State Building Commissioner. No local commercial permits shall be issued hereunder until a copy of a release for construction from the State Building Commissioner is received by the Building Commissioner.

(C) One and 2 family residential dwellings will be solely under the jurisdiction of the Town Building Commissioner. The time period for use of a building permit shall run for 1 year from the date of issuance. If the building is not completed by then, the party shall re-apply paying only the renewal fee. However, the Building Commissioner shall from time to time extend the expiration time periods at his or her discretion.

(Prior Code, Ch. 12, Art. 12.02(A))

§ 150.21 PERMIT REQUIRED.

(A) A permit shall be obtained before beginning any construction, alteration, or repair of any building or structure, the value of which exceeds \$500, which involves or affects electrical, plumbing, ventilating, heating, air condition systems, or structural elements. This section shall not be interpreted to require a building permit:

(1) For cosmetic repairs and or maintenance (e.g., floor coverings, painting or roofing);
and

(2) For the repair or maintenance of a private home performed by the occupant thereof.

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(B) All permits shall be issued by the Building Commissioner, and all fees provided for it this subchapter shall be paid to the Clerk-Treasurer. All permits shall expire 1 year from the date of the original issue unless renewed or extended.

(Prior Code, Ch. 12, Art. 12.02(B))

§ 150.22 NON-ANCHORED SEMI-TRAILERS AND MOBILE HOMES.

(A) Any non-secure, portable semi-trailer, trailer or mobile home that has been on the same property for a period of more than 180 days without being moved from that property, must obtain a building permit and comply with all pertinent town codes.

(B) Each unit must be properly tied down and anchored in conformance to the town's mobile home requirements.

(C) The unit must also be properly skirted and maintained in good condition so as not to create an unsightly appearance or unsafe environment.

(D) Violations are subject to reasonable penalties imposed by the current town codes and ordinances in § 150.26.

(Ord. passed - -)

§ 150.23 ACCESSORY STRUCTURES, DETACHED GARAGES AND CARPORTS THAT REQUIRE A TOWN BUILDING PERMIT.

(A) *Portable single story units with less than a total of 120 square feet.* However, the structure must be properly anchored down by any tie down device that secures the mobile structure to the ground, so as to avoid lateral, vertical or uplift movement due to wind pressure from any direction. The structure must also contain no more than 15 AMP electrical service. Permanent heat and water supply sanitation are not permitted.

(B) *Single story units with monolithic footing containing less than 721 square feet (8 feet W x 18 feet D, 12 feet w x 12 feet).* The slab must contain a welded wire fabric or equivalent. The unit may contain 1 permanent heat and 1 water supply sanitation. All electrical, floors, exterior walls and/or roof systems and/or girders and headers shall comply with 1 and/or 2 family dwelling codes.

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(C) *Note.* All stick built units must have prior approval by the Building Inspector and/or Commissioner to ensure that construction methods and materials used do not create an unsightly appearance or present a safety hazard. Plans and/or drawings along with materials list shall be submitted with all written requests prior to starting the project. Approval of the project shall be at the sole discretion of the Building Commissioner. However, a denial may be appealed to the Board of Zoning Appeals and the Town Council. Violations subject to reasonable penalties (demolition and momentarily) as imposed by the Town Council, not to exceed \$500.
(Ord. passed - -)

§ 150.24 WORK TO COMPLY WITH OTHER APPLICABLE REGULATIONS.

All work done under any permit issued under this subchapter shall be in full compliance with all other regulations pertaining thereto, and in addition to the fees for permits hereinafter provided for, there shall be paid the fees prescribed in those regulations.
(Prior Code, Ch. 12, Art. 12.02(C))

§ 150.25 FEES.

(A) The fees for all permits required under the provisions of this subchapter shall be the fees set forth in division (B) below. It being the intention, however, that only 1 fee shall be charged. This permit fee shall, however, be in addition to any hook-on or other connection charges, electric meter base charges, or other fees charged pursuant to other ordinances. The permit fee does not include inspection fees.

(B) The following fees for building and service permits shall apply. All fees will be charged in even-dollar sums only.

<i>Type of Construction</i>	<i>Required Inspections</i>	<i>Inspection Fees</i>	<i>Permit Fee</i>
Class 2 Structures and manufactured homes	3-4	\$25	\$100 for up to 1,250 square feet and \$0.10 square feet for each square feet over.
Additions and alterations	1-3	\$25	\$0.10 square feet. Maximum \$1,500
Accessory buildings (storage uninhabitable structures)	1-2	\$25	\$0.05 square feet. Maximum \$750
Modular/sectional homes	2-3	\$25	\$100
Swimming pools	1	\$25	\$25

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<i>Type of Construction</i>	<i>Required Inspections</i>	<i>Inspection Fees</i>	<i>Permit Fee</i>
Class 1 Structures	Minimum of 3	\$50	\$0.20 square feet. Maximum \$6,000
Accessory buildings (storage uninhabitable structures)	1-2	\$25	\$0.10 square feet
Electric service upgrade	1	\$25	\$25
Plumbing/install or extend	1	\$25	\$25
Paving and excavation			
Sidewalks/grading	2	\$25	\$25
Driveways	2	\$25	
(A) Residential driveways			\$25
(B) Multi-family, commercial and Industrial			\$25
(C) Residential, commercial and industrial subdivisions and planned unit development entrances			\$25
Fences	2	\$10	\$25
Moving of building	1	\$25	\$25
Wrecking of building (in excess of 120 square feet)	1	\$25	\$25
Renewal Fee			\$25
<p>Note: Additional inspections may be required at the discretion of Building Commissioner. Additions and alterations do not structurally alter an existing load bearing wall or foundation.</p> <p>An electrical upgrade is any alteration to an electrical system requiring the disconnecting of electrical service to the structure in order to perform the electrical upgrade.</p>			

(C) For unusually large or complex buildings or structures, the Building Commissioner shall have the power to increase the number of required inspections as needed. The Building Commissioner shall in all cases designate the stage of construction when each required inspection must be requested by the permit holder. No concrete shall be placed for foundations without prior inspection. No electrical, structural, mechanical, plumbing, or thermal insulation

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work shall be covered prior to the inspection.

(D) Where additional inspections are required due to failure of the permit holder to have work ready for inspection at a designated state of construction, the Building Commissioner shall have the power to assess a re-inspection fee of \$25 for each additional inspection. Re-inspection fees shall be paid to the Building Commissioner and promptly turned in to the Clerk-Treasurer to be deposited in the town general funds.

(E) The Building Commissioner shall submit routine reports as needed and an annual report (on or before January 31) to the Town Council of inspections performed and permit fees collected on all permits. The report shall include an analysis of inspections performed, permit fees collected, cost of inspection operations and recommendations for adjustment of required inspections and single inspection fees as necessary.
(Prior Code, Ch. 12, Art. 12.02(D))

§ 150.26 EARLY START; ADDITIONAL FEE.

(A) Any person, firm, partnership, or corporation who knowingly starts construction prior to applying for, and receiving a building permit, shall be charged a fee equal to 3 times the original permit fee.

(B) There shall be a fee of \$25 for each additional inspection required, in addition to all other fees provided for in this subchapter.
(Prior Code, Ch. 12, Art. 12.02(E))

§ 150.27 WAIVER OF FEE.

(A) The Town Council shall have the authority to waive all or any part of the fees required herein for the permit and or inspections.

(B) The determination for a waiver of all or part of the fees required by this subchapter for a building permit or inspection shall lay within the sole discretion of the Spencer Town Council.
(Prior Code, Ch. 12, Art. 12.02(F))

§ 150.28 REVIEW OF APPLICATION.

Prior to the issuance of any building permit under this subchapter, the Building Commissioner shall:

(A) Review all building permit applications to determine full compliance with the provisions of this subchapter;

(B) Review all building permit applications for new construction or substantial improvements

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to determine whether proposed building sites will be reasonably safe from flooding;

(C) Review building permit applications for major repairs within the flood plain area having special flood hazards to determine that the proposed repair:

(1) Uses construction materials and utility equipment that are resistant to flood damage;
and

(2) Uses construction methods and practices that will minimize flood damage.

(D) Review building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction, including prefabricated and mobile homes:

(1) Is protected against flood damage;

(2) Is designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure and flood damage; and

(3) Uses construction methods and practices that will minimize flood damage.
(Prior Code, Ch. 12, Art. 12.02(G))

HAZARDOUS STRUCTURES AND UNSAFE DWELLINGS

§ 150.45 PURPOSE.

This subchapter declares that hazardous structures and unsafe dwellings are a public nuisance; it provides for notification to owners and inspection of premises; it provides for the issuance of orders to remedy conditions; it authorizes the razing of hazardous structures and unsafe dwellings; and it provides penalties for failure to abate the public nuisance when ordered to do so.

(Prior Code, Ch. 14, Art. I)

§ 150.46 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

COMMISSIONER. The Town Manager serving in his or her capacity as the Spencer Commissioner of Buildings.

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HAZARDOUS STRUCTURE. Any building or structure, or any part thereof, that is in an impaired structural condition or state which renders it unsafe or dangerous to any person or property; is a fire hazard; is a hazard to the public health; is a public nuisance; or it does not comply with local standards for building condition or maintenance as found in any ordinance of the town or in state law.

ORDER. Any written directive issued by the Town Council.

OWNER. Any entity capable of holding an interest in real estate, including but not limited to, individuals, corporations, and companies.

UNSAFE DWELLING. Any part of any building or premises used as a place or residence or habitation or for sleeping by any person when it is dangerous or detrimental to life or health because of want of repair, defects in the drainage, plumbing, lighting, ventilation or construction, infection with contagious disease, or the existence on the premises of an unsanitary condition likely to cause sickness among occupants of the dwelling, or is considered "unfit for human habitation".

(Prior Code, Ch. 14, Art. II)

§ 150.47 DWELLINGS DECLARED A PUBLIC NUISANCE.

In accordance with authority provided by the Indiana Code, the Town Council hereby declares that hazardous structures, dangerous buildings adjoining streets, and unsafe dwellings which are unfit for human habitation to be public nuisances and a public nuisance which shall be abated when so ordered by the Town Council.

(Prior Code, Ch. 14, Art. III)

§ 150.48 NOTIFICATION TO OWNER.

(A) *Owner advised of condition.* When the Board determines that a structure is in the condition that it creates a fire hazard, or it endangers the public health, safety and welfare, or it is a dwelling unfit for human habitation, it will request the Commissioner to send a letter to the owner (or person responsible for the property) outlining the condition of the structure, and pointing out how it endangers the public. The owner will be requested to repair the structure if it is repairable or to raze it and remove the debris from the premises.

(B) *Owner's cooperation solicited.* The Commissioner will solicit the owner's cooperation and will provide a reasonable length of time for the owner to initiate action. In addition, the Commissioner will meet with the owner, if he or she so desires, to discuss the matter and attempt to arrive at a mutually agreeable course of action.

(C) *Owner fails to cooperate.* If the owner elects not to cooperate voluntarily, the Commissioner will take the actions prescribed by this subchapter to cause the repair or razing of hazardous structures and unsafe dwellings to protect the health, safety, and welfare of the

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citizens of the town.

(Prior Code, Ch. 14, Art. IV)

§ 150.49 INSPECTION OF PREMISES.

(A) *Formal inspection of structure/dwelling.* If the owner fails to cooperate and fails to abate the public nuisance, the Commissioner will conduct a formal inspection of the structure or dwelling and will, if necessary, question the owners, lessee, or occupants, or anyone else having knowledge of the facts regarding the structure or dwelling. It is the duty of all the persons to assist the Commissioner in finding the true facts.

(B) *Right of free access.* The Commissioner shall have the right of free access to the structure or dwelling during all reasonable hours. If the structure or dwelling is vacant or abandoned, or access is denied or unavailable, the Commissioner may use the force as is reasonably necessary to effect entrance and to complete his or her inspection.

(C) *Use of other governmental agencies.* The Commissioner shall, if he or she deems the action necessary or desirable, request assistance of the Fire, Police, Health and Welfare Departments to insure that all phases of the public safety, health and welfare are fully considered during his or her inspection of the structure or dwelling.

(Prior Code, Ch. 14, Art. V)

§ 150.50 REPORT OF INSPECTION.

(A) The Commissioner shall prepare a written report of the findings of his or her inspection and the report will be filed in the office of the Spencer Commissioner of Buildings, Municipal Building. This report will show the location of the structure or dwelling, its owner, the date and time of the inspection, the names of the persons making the inspection and will include statements as to the physical condition of the structure, an estimate of its value, the probable costs of repair, and the Commissioner's recommendations for repair, improvement or demolition.

(B) The report shall also have attached to it photographs made of the structure or dwelling at the time of the inspection and so certified by the Commissioner.

(Prior Code, Ch. 14, Art. VI)

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§ 150.51 OFFICIAL ORDER TO REMEDY CONDITIONS.

(A) *Order to take remedial action.* The Commissioner will provide the Town Council with his or her report of inspection, and based thereon if the Board concurs, the Board will issue a written order directing that necessary remedial action be taken and will cause the order to be served upon and notice given to those persons affected by it. This order will specify the general nature of any repairs, alterations, reconstruction, or other steps that are found to be feasible and reasonably required to be done in order to remedy the conditions which were found to exist. The order will also specify a reasonable length of time (normally 30 days) to comply with the provisions of the order.

(B) *Order to condemn and raze.* If, in the opinion of the Board, the condition of the structure is such that economical repair is not feasible (or if repairs would cost more than 50% of the value of the building) the structure will be condemned and it shall be ordered razed and the debris removed from the premises.

(C) *Order to vacate.* The Board has the power and authority to compel all occupants of unsafe dwellings unfit for human habitation and hazardous structures to vacate and remain out of them. It shall be the duty of all members of the Police and Fire Departments, or other peace officers, to assist in the enforcement of such an order issued by the Board.

(D) *Extension in compliance with order.* Although all persons concerned shall comply promptly and fully with the order, the Board may, upon a showing of reasonable necessity, grant an extension of time for compliance.
(Prior Code, Ch. 14, Art. VII)

§ 150.52 SERVICE OF ORDER.

(A) *Personal service.* If the names and addresses of the owner or other person(s) having an interest in the property, as secured by a recorded mortgage or written contract, can be found upon reasonable inquiry, a written copy of the order will be served on them personally or by leaving a copy at their last known place of residence. Service of the order will be shown by affidavit of the person serving it. If there is a question of the competency of the person to be served, a copy will also be served on his or her legal guardian or custodian.

(B) *Service by registered mail.* If personal service cannot be made, but addresses are known, service may be made by using registered United States mail, with return receipt requested.

(C) *Service by publication of notice.* If personal service cannot be made and addresses are not known, notice of the order will be given by publication 1 time in the *Spencer Evening World* and the *Owen Leader* newspapers.
(Prior Code, Ch. 14, Art. VIII)

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§ 150.53 NOTICE TO THE PUBLIC.

(A) When the condition of a structure is such that it is hazardous, unsafe and/or dangerous, or if an unsafe dwelling is considered unfit for human habitation, a notice will be placed in conspicuous places on the structure by the Commissioner which will read as follows: This building is in an unsafe condition and it must not be used or entered by anyone without the written permission of the Board of Trustees of Spencer, Indiana.

(B) This notice, after being posted for 24 hours, will constitute sufficient notice to all tenants or occupants of the premises, to all persons entering the building, to all agents of the owners or leasees having control of the building, and it shall constitute notice to all persons having mere statutory liens upon the property.

(Prior Code, Ch. 14, Art. IX)

§ 150.54 HEARINGS.

(A) *Notice to owner.* If any person fails to comply with an order directing that a hazardous structure or unsafe dwelling be repaired, evacuated, or razed within the time limit established by the Board, a written notice will be served upon the owner of the building to appear before the Board at a time and place fixed in the notice and show cause why the order should not be complied with. The Board shall hear the matter and then affirm, modify or rescind the order. If the order is affirmed, the Board shall take steps to cause the structure to be repaired, evacuated or razed.

(B) *Right of appeal.* Any person who may be aggrieved by the action of the Board shall have the right to appeal to the Circuit Court of Owen County. The appeal shall be taken within 10 days after the date that the Board's decision is rendered. Service of written notice of intent to appeal the Board's action will stay further action by the Board.

(Prior Code, Ch. 14, Art. 10)

§ 150.55 RAZING THE STRUCTURE/DWELLING.

(A) *Collection of cost.* If the owner refuses or neglects to abate the nuisance (i.e. raze the structure/ dwelling and remove the debris from the premises) the Board may take the action as is necessary to cause the abatement and collect the costs incurred by civil suit or by placing the costs on the tax duplicates for property involved. Additional penalties to include reasonable attorney fees and court costs incurred by the town for collection of the account.

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(B) Use of qualified wrecking organizations.

(1) The razing of large unsafe and dangerous structures shall be done by qualified wreckers. It shall be the duty of the Town Council to give notice by posting a copy of request for bids in the office of the Spencer Commissioner of Buildings for at least 10 days prior to the time stated in the notice that the bids will be received for wrecking the building. The bid may be awarded to the lowest and most responsive bidder. The contract shall be executed by the Board and shall contain the provisions as are deemed proper and shall contain a clause that the contract is executed by the Board as agent for the owner of the structure or dwelling and that the town is in no way obligated to pay the cost of the wrecking of the structure or dwelling.

(2) The owner of the structure or dwelling shall be served with a copy of the notice of bidding at least 7 days prior to the date fixed in the notice for the reception of bids. The entire cost of the wrecking shall be paid by the owner and the contractor shall be entitled to have a lien upon the real estate upon which structure or dwelling was located for the full amount of the cost of the wrecking.

(Prior Code, Ch. 14, Art. XI)

§ 150.56 SALVAGE MATERIALS.

(A) Within 72 hours after the Board's final decision to raze, the owner of a structure or dwelling shall have the prior right and may elect in writing to retain all salvaged materials by procuring the release of any liens created by the razing, or the owner may elect to have salvage materials sold and credited to the cost of the work. If no written filing of the owner's election is made, the Board can elect to sell the materials to help defray the costs.

(B) If the salvaged materials have no value or if they cannot be sold within a reasonable time, the materials will be removed from the premises and taken to a legally authorized facility.
(Prior Code, Ch. 14, Art. XII)

§ 150.99 PENALTY.

(A) Any person violating any provision of this chapter for which no penalty is prescribed shall be subject to § 10.99.

(B) (1) Whoever creates or maintains any nuisance (hazardous structure or an unsafe dwelling) and who fails or refuses to abate the nuisance when so ordered, shall be subject to a fine of not more than \$200 or imprisonment for not more than 30 days, or both. A separate offense shall be deemed committed upon each day during or on which the violation occurs or continues beyond the date fixed by the Town Council for abatement of the nuisance.

(2) Any person who shall prevent or attempt to prevent the posting of any notice or who shall remain in use of a hazardous building or unsafe dwelling, or shall refuse to comply with any

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orders, or willfully delays or interferes or damages anything or persons engaged in performing work under §§ 150.45 *et seq.*, shall be guilty of a misdemeanor and on conviction shall be fined any sum not to exceed \$500 and each day that the violation continues shall be considered a separate offense.

(Prior Code, Ch. 14, Art. XIII)

CHAPTER 151: FLOOD DAMAGE PREVENTION

Section

- 151.01 Statutory authorization
- 151.02 Statement of purpose
- 151.03 Definitions
- 151.04 Duties of the Administrator
- 151.05 Regulatory flood elevation
- 151.06 Improvement location permit
- 151.07 Preventing increased damages
- 151.08 Protecting buildings
- 151.09 Other development requirements
- 151.10 Variances
- 151.11 Disclaimer of liability
- 151.12 Abrogation and greater restrictions

151.99 Penalty

Appendix A: Flood Plain Map of Spencer, Indiana

§ 151.01 STATUTORY AUTHORIZATION.

The Indiana Legislature granted the power to local units of government (I.C. 36-7-4) to control land use within their jurisdictions in order to accomplish the following herein. (Prior Code, Ch. 9, Art. VII, § 1) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

§ 151.02 STATEMENT OF PURPOSE.

(A) The purpose of this chapter is to guide development in the flood hazard areas in order to reduce the potential for loss of life and property, reduce the potential for health and safety hazards, and to reduce the potential for extraordinary public expenditures for flood protection and relief under the authority granted to local units of government to control land use within their jurisdiction, which includes taking into account the effects of flooding.

(B) The Town Council hereby adopts the following flood plain management regulations in order to accomplish the following:

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- (1) To prevent unwise developments from increasing flood or drainage hazards to others;
- (2) To protect new buildings and major improvements to buildings from flood damage;
- (3) To protect human life and health from hazards of flooding;
- (4) To lessen the burden on the taxpayer for flood control projects, repairs to flood-damaged public facilities and utilities, and flood rescue and relief operations;
- (5) To maintain property values and a stable tax base by minimizing the potential for creating flood blighted areas; and
- (6) To make federally subsidized flood insurance available for property in the Town of Spencer, Indiana by fulfilling the requirements of the National Flood Insurance Program. (Prior Code, Ch. 9, Art. VII, § 2) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-6, passed 6-15-1992)

§ 151.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

BUILDING. See ***STRUCTURE.***

DEVELOPMENT.

- (1) Any man-made change to improved or unimproved real estate including but not limited to:
 - (a) Construction, reconstruction, or placement of a building or any addition to a building;
 - (b) Installing a manufactured home on a site, preparing a site for a manufactured home or installing a travel trailer on a site for more than 180 days;
 - (c) Installing utilities, erection of walls and fences, construction of roads, or similar projects;
 - (d) Construction of flood control structures such as levees, dikes, channel improvements, and the like;
 - (e) Mining, dredging, filling, grading, excavation, or drilling operations;
 - (f) Construction and/or reconstruction of bridges or culverts;

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(g) Storage of materials; or

(h) Any other activity that might change the direction, height, or velocity of flood or surface waters.

(2) **DEVELOPMENT** does not include activities such as the maintenance of existing buildings and facilities such as paintings re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent buildings.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FHBM. Flood Hazard Boundary Map.

FIRM. Flood Insurance Rate Map.

FLOOD. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulations or the runoff of surface waters from any source.

FLOODPLAIN. The channel proper and the areas adjoining any wetland, lake or watercourse which have been or hereafter may be covered by the regulatory flood. The **FLOODPLAIN** includes both the floodway and the floodway fringe district.

FLOOD PROTECTION GRADE or the **FPG.** The elevation of the regulatory flood plus 2 feet at any given location in the SFHA.

FLOODWAY. The channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

FLOODWAY FRINGE. Those portions of the flood hazard areas lying outside the floodway.

LOWEST FLOOR. The lowest of the following:

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- (1) The basement floor;
- (2) The garage floor, if the garage is the lowest level of the building;
- (3) The first floor of buildings elevated on pilings or constructed on a crawl space with permanent openings; or
- (4) The floor level of any enclosure below an elevated building where the walls of the enclosure provide any resistance to the flow of flood waters unless:
 - (a) The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of 2 openings (in addition to doorways and windows) having a total of 1 square foot for every 2 square feet of enclosed floor area subject to flooding. The bottom of all the openings shall be no higher than 1 foot above the enclosed area's floor.
 - (b) The enclosed space shall be useable for non-residential purposes and building access.

MANUFACTURED HOME. A structure, transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term **MANUFACTURED HOME** does not include a **RECREATIONAL VEHICLE**.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

RECREATION VEHICLE. A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

REGULATORY FLOOD. The flood having a 1% probability of being equaled or exceeded in any given year, as calculated by a method and procedure which is acceptable to and approved by the Indiana Natural Resources Commission. The regulatory flood elevation at any location is as defined in § 151.05 of this chapter. The **REGULATORY FLOOD** is also known by the term

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BASE FLOOD.

SFHA or SPECIAL FLOOD HAZARD AREA. Those lands within the jurisdiction of the town that are subject to inundation by the regulatory flood. The SFHAs of the town are generally identified as such on the Flood Insurance Rate Map of the town prepared for Owen County by the Federal Emergency Management Agency and dated April 1, 1993. The SFHAs of those parts of unincorporated Owen County that are within the extraterritorial jurisdiction of the town or that may be annexed into the town are generally identified as such on the Flood Hazard Boundary Map prepared for Owen County by the Federal Emergency Management Agency and dated May 15, 1981. The Flood Insurance Rate Map prepared for Owen County by the Federal Emergency Management Agency and dated April 1, 1993.

STRUCTURE. A structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles and travel trailers to be installed on a site for more than 180 days.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements of any alteration of a historic structure, provided that the alteration will not preclude the structures continued designation as a historic structure. (Prior Code, Ch. 9, Art. VII, § 3) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2001-2, passed 11-5-2001)

§ 151.04 DUTIES OF THE ADMINISTRATOR.

The Zoning Administrator for the Town of Spencer is appointed to review all development and subdivision proposals to insure compliance with this chapter, including but not limited to the following duties:

(A) Ensure that all development activities within the SFHAs of the jurisdiction of the town meet the requirements of this chapter;

(B) Provide information and assistance to citizens upon request about permit procedures and floodplain construction techniques;

(C) Ensure that construction authorization has been granted by the Indiana Natural Resources Commission for all development projects subject to § 151.07 of this chapter, and maintain a record of the authorization (either copy of an actual permit or letter of recommendation);

(D) Maintain a record of the as-built elevation of the lowest floor (including basement) of all

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new and/or substantially improved buildings constructed in the SFHA;

(E) Maintain a record of the engineer's certificate and the as built flood proofed elevation of all buildings subject to § 151.08 of this chapter;

(F) Cooperate with state and federal floodplain management agencies to improve base flood and floodway data and to improve the administration of this chapter. Submit reports as required for the National Flood Insurance Program;

(G) Maintain for public inspection and furnish upon request regulatory flood data, SFHA maps, copies of DNR permits and letters of recommendation, federal permit documents, and as built elevation and flood proofing data for all buildings constructed subject to this chapter; and

(H) Notify adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse and submit copies of the notifications to FEMA.

(Prior Code, Ch. 9, Art. VII, § 4) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2001-2, passed 11-5-2001)

§ 151.05 REGULATORY FLOOD ELEVATION.

This chapter's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the Department of Natural Resources for review and approval.

(A) The regulatory flood elevation for each of the SFHAs delineated as an A Zone on the Flood Insurance Rate Map of the town shall be according to the best data available as provided by the Department of Natural Resources.

(B) The regulatory flood elevation for the SFHAs of those parts of unincorporated Owen County that are within the extraterritorial jurisdiction of the town or that may be annexed into the town shall be according to the best data available as provided by the Department of Natural Resources.

(Prior Code, Ch. 9, Art. VII, § 5) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

§ 151.06 IMPROVEMENT LOCATION PERMIT.

No person, firm, corporation, or governmental body not exempted by state law shall commence any **DEVELOPMENT** in the SFHA without first obtaining an improvement location permit from the Board of Zoning Appeals. The Board of Zoning Appeals shall not issue an improvement location permit if the proposed **DEVELOPMENT** does not meet the requirements of this chapter.

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(A) The application for an improvement location permit shall be accompanied by the following:

- (1) A description of the proposed development;
- (2) Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams;
- (3) A legal description of the property site;
- (4) A site development plan showing existing and proposed structure locations and existing and proposed land grades; and
- (5) Elevation of lowest floor (including basement) of all proposed structures. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD).

(B) Upon receipt of an application for an improvement location permit, the Building Official shall determine if the site is located within an identified floodway or within the floodplain where the limits of the floodway have not yet been determined.

(1) If the site is in an identified floodway, the Building Official shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Department of Natural Resources and apply for a permit for construction in a floodway.

(a) Under the provisions of I.C. 14-28-1, a permit from the Natural Resources Commission is required prior to the issuance of a local building permit for any excavation, deposit, construction or obstruction activity located in the floodway. This includes land preparation activities such as filling grading, clearing, paving and the like, undertaken before the actual start of construction of the building. No action shall be taken by the Building Official until a permit has been issued by the Natural Resources Commission granting approval for construction in the floodway.

(b) Once a permit has been issued by the Natural Resources Commission, the Building Official may issue the local improvement location permit, provided the provisions contained in §§ 151.07 and 151.08 of this chapter have been met. The improvement location permit cannot be less restrictive than the permit issued by the Natural Resources Commission.

(2) If the site is located in an identified floodway fringe, then the Building Official may issue the local improvement location permit provided the provisions contained in §§ 151.07 and 151.08 of this chapter have been met. The key provision is that the lowest floor of any new or substantially improved structure shall be at or above the flood protection grade.

(3) If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined (shown as Zone A on the Flood Insurance Rate Map), and the drainage area upstream of the site is greater than 1 square mile, the Building Official shall require the applicant to forward the application, along with all pertinent plans and specifications,

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to the Department of Natural Resources for review and comment.

(a) No action shall be taken by the Building Official until either a permit for construction in the floodway or a letter of recommendation citing the 100 year flood elevation and the recommended flood protection grade has been received from the Department of Natural Resources.

(b) Once the Building Official has received the proper permit or letter of recommendation approving the proposed development, an improvement location permit may be issued provided the conditions of the ILP are not less restrictive than the conditions received from Natural Resources and the provisions contained in §§ 151.07 and 151.08 of this chapter have been met.

(4) (a) If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined and the drainage area upstream of the site is less than 1 square mile, the Zoning Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodway fringe and the 100 year elevation for the site.

(b) Upon receipt, the Zoning Administrator may issue the local improvement location permit, provided the provisions contained in §§ 151.07 and 151.08 have been met.
(Prior Code, Ch. 9, Art. VII, § 6) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2001-2, passed 11-5-2001)

§ 151.07 PREVENTING INCREASED DAMAGES.

No development in the SFHA shall create a damaging or potential damaging increase in flood heights or velocity or threat to public health and safety.

(A) Within the floodway identified on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map, the following standards shall apply:

(1) No development shall be allowed which acting alone or in combination with existing or future similar works, will cause any increase in the elevation of the regulatory flood; and

(2) For all projects involving channel modifications or fill (including levees) the town shall submit a request to the Federal Emergency Management Agency to revise the regulatory flood data.

(B) Within all SFHAs identified as A Zones (no 100 year flood elevation and/or floodway/floodway fringe delineation has been provided) the following standard shall apply. The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood elevation more than 1/10 of 1 foot and will not increase flood damages or potential flood damages.

(C) Public health standards in all SFHAs:

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(1) No development in the SFHA shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the flood protection grade, unless the materials are stored in a storage tank or flood proofed building constructed according to the requirements of § 151.08 of this chapter.

(2) New and replacement sanitary sewer lines and on-site waste disposal systems may be permitted providing all manholes or other above ground openings located below the FPG are watertight.

(Prior Code, Ch. 9, Art. VII, § 7) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

§ 151.08 PROTECTING BUILDINGS.

In addition to the damage prevention requirements of § 151.07, all buildings to be located in the SFHA shall be protected from flood damage below the FPG.

(A) This building protection requirement applies to the following situations:

(1) Construction or placement made to any new building having a floor area of greater than 400 square feet;

(2) Structural alterations made to:

(a) An existing (previously unaltered) building, the costs of which equals or exceeds 50% of the value of the pre-altered building (excluding the value of the land); and

(b) Any previously altered building.

(3) Reconstruction or repairs made to damaged buildings that are valued at or more than 50% of the market value of the building (excluding the value of the land), before damage occurred;

(4) Installing a manufactured home on a new site or a new manufactured home on an existing site. This chapter does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and

(5) Installing a travel trailer on a site for more than 180 days.

(B) This building protection requirement may be met by 1 of the following methods. The Building Official shall maintain a record of compliance with these building protection standards as required in § 151.04 of this chapter.

(1) A residential or nonresidential building maybe constructed on a permanent landfill in accordance with the following:

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(a) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method.

(b) The fill should extend at least 10 feet beyond the foundation of the building before sloping below the FPG.

(c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.

(d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

(e) The lowest floor (see definition of **LOWEST FLOOR** in § 151.03) shall be at or above the FPG.

(2) A residential or nonresidential building may be elevated in accordance with the following:

(a) The building or improvements shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation provided:

1. Outside a manufactured home park or subdivision;
2. In a new manufactured home park or subdivision;
3. In an expansion to an existing manufactured home park or subdivision; or

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood.

(b) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.

(3) Recreation vehicles placed on a site shall either:

(a) Be on the site for less than 180 consecutive days;

(b) Be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

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(c) Meet the requirements for **MANUFACTURED HOMES** in division (B)(3) of this section.

(4) A non-residential building may be flood proofed to the FPG (in lieu of elevating) if done in accordance with the following:

(a) A registered professional engineer shall, certify that the building has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The building design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice.

(b) Flood proofing measures shall be operable without human intervention and without an outside source of electricity.

(Prior Code, Ch. 9, Art. VII, § 8) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2001-2, passed 11-5-2001)

§ 151.09 OTHER DEVELOPMENT REQUIREMENTS.

(A) The Plan Commission shall review all proposed subdivisions to determine whether the subdivision lies in a flood hazard area as defined elsewhere by ordinance. If the Plan Commission finds the subdivision to be so located, the Plan Commission shall forward plans and materials to the Indiana Department of Natural Resources for review and comment. The Plan Commission shall require appropriate changes and modifications in order to assure that:

(1) It is consistent with the need to minimize flood damages;

(2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;

(3) Adequate drainage is provided so as to reduce exposure to flood hazards; and

(4) Onsite waste disposal systems, if provided, will be so located and designed to avoid impairment of them or contamination from them during, the occurrence of the regulatory flood.

(B) Developers shall record the 100 year flood elevation on all subdivision plats containing lands identified elsewhere by ordinance as within a flood hazard area prior to submitting the plats for approval by the Plan Commission.

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(C) All owners of manufactured home parks or subdivisions located within the SFHA identified as Zone A on the community's FHMB or FIRM shall develop an evacuation plan for those lots located in Zone A and file it with the local Plan Commission and have it filed and approved by the appropriate community emergency management authorities.

(Prior Code, Ch. 9, Art. VII, § 9) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

§ 151.10 VARIANCES.

(A) The Board of Zoning Appeals may consider issuing a variance to the terms and provisions of this chapter provided the applicant demonstrates that:

(1) There exists a good and sufficient cause for the requested variance;

(2) The strict application of the terms of this chapter will constitute an exceptional hardship to the applicant; and

(3) The granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, or create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(B) The Board of Zoning Appeals may issue a variance to the terms and provisions of this chapter subject to the following standards and conditions:

(1) No variance or exception for a residential use within a floodway subject to § 151.07(A) or (B) may be granted.

(2) Any variance or exception granted in a floodway subject to § 151.07(A) or (B) will require a permit from Natural Resources.

(3) Variances or exceptions to the Building Protection Standards of § 151.08 may be granted only when a structure is to be located on a lot of ½ acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(4) Variance or exception may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects.

(5) All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction.

(6) The Board of Zoning Appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of excessive flood insurance premiums.

(Prior Code, Ch. 9, Art. VII, § 10) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-

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§ 151.11 DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this chapter does not create any liability on the part of the community, natural resources, or the State of Indiana, for any flood damage that results from reliance on this chapter or any administrative decision made lawfully thereunder.

(Prior Code, Ch. 9, Art. VII, § 11) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

§ 151.12 ABROGATION AND GREATER RESTRICTIONS.

This chapter repeals and replaces other ordinances adopted by the Town Council to fulfill the requirements of the National Flood Insurance Program. However, this chapter does not repeal the original resolution or ordinance adopted to achieve eligibility in the program. Nor does this chapter repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where this chapter and other ordinance easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more restrictive restrictions shall take precedence. In addition, the Town Council shall assure that all National Flood Insurance regulations (contained in 44 C.F.R. § 60.3) and State Floodplain Management regulations and laws (I.C. 14-28-3) are met. (Prior Code, Ch. 9, Art. VII, § 12) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

§ 151.99 PENALTY.

(A) Failure to obtain an improvement location permit in the SFHA or failure to comply with the requirements of a permit or conditions of a variance shall be deemed to be a violation of this chapter. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the zoning code for the Town of Spencer.

(B) A separate offense shall be deemed to occur for each day the violation continues to exist.

(C) The Spencer Advisory Planning Commission shall inform the owner that any violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.

(D) Nothing herein shall prevent the Town of Spencer from taking other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Flood Damage Prevention

(Prior Code, Ch. 9, Art. VII, § 12) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

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Flood Damage Prevention

Appendix A: Flood Plain Map of Spencer, Indiana

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CHAPTER 152: ZONING

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GENERAL PROVISIONS

§ 152.001 PURPOSE.

(A) This chapter regulates the use of land and the location of buildings and structures to promote the health, safety, and general welfare of all citizens of the town; it provides for the most appropriate use of land and the conservation and stabilization of property values; it implements the Spencer Zoning Comprehensive (Master) Plan; and it provides penalties for violations of its provisions.

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(B) It also creates the Spencer Advisory Zoning Appeals Board, establishes how to file an appeal, provides to public hearings and defines how and when variances special uses, and exceptions may be granted.

(Prior Code, Ch. 9, Art. I) (Ord. 1987-2, passed 2-2-1987)

§ 152.002 APPLICABILITY.

(A) *Area of applicability.* Shall apply to all land use, buildings and structures for residential, commercial, industrial, and any other use in the town.

(B) *Interpretation of Zoning Ordinance.* Shall be read in terms that include any and all other ordinances of the town necessary to understand this chapter and attain its purposes. In addition, the provisions of this chapter shall be held to the minimum necessary for the promotion of public health, safety, and general welfare.

(C) *Conformance.* No building, structure, or land shall be used or occupied, or be erected, constructed, remodeled, or moved unless in conformance with the rules in this chapter for the Zoning District in which it is located or will be located.

(Prior Code, Ch. 9, Art. II) (Ord. 1987-2, passed 2-2-1987)

§ 152.003 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

ACCESSORY BUILDING. A building or structure on the same lot (or on a contiguous lot owned by the same person) as a principal building. This accessory building is clearly an extra building, normally found and used in conjunction with the main or principal building.

BUILDING. Any structure built for the shelter or enclosure of persons, animals, property, or substances of any kind, excluding fences.

BUILDING, DETACHED. Any building or structure separated from another building on the same lot by at least 10 feet.

BUSINESS. An occupation, employment, or enterprise that occupies time, attention, labor, and materials; or where merchandise is sold or exhibited, or where services are offered.

COMMISSION. The Spencer Plan Commission.

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DWELLING: MULTI-UNIT. A building used by 2 or more households, living independently of each other in separate units; but does not include motels, hotels or resorts.

DWELLING: SINGLE-UNIT. A detached principal building, other than a mobile home, designed or used for a dwelling by only 1 household as an independent living unit.

DWELLING UNIT. Room, or rooms, connected together, kept or established for owner occupancy or for rent, and physically separate from other rooms in the same structure; with cooking; sanitary, living, and sleeping facilities.

FLOOD PLAIN. Any land area that adjoins the channel of a river, stream, lake, or other bodies of water that could be inundated by flood waters which can be reasonably expected in that area.

IMPROVEMENTS. Any work connected with servicing or furnishing facilities, such as grading, street building, curbs, gutters, driveway approaches, sidewalks, water lines, sewers, culverts, bridges, utilities, and other appropriate items.

MANUFACTURED HOME. As set forth in 42 U.S.C. §§ 5401 *et seq.* as it existed on January 1, 2007, a structure, transportable in 1 or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this section except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that the term shall not include any self-propelled recreational vehicle.

MASTER PLAN. A comprehensive plan for the development of the town and any amendments to the plan; prepared by the Spencer Plan Commission.

MOBILE HOME.

- (1) A dwelling, including the equipment sold as part of the dwelling that:
 - (a) Is factory assembled;
 - (b) Is transportable;
 - (c) Is intended for year-round occupancy;
 - (d) Is designed for transportation on its own chassis; and

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(e) Was manufactured before the effective date of the Federal Manufactured Housing Construction and Safety Standards law of 1974 (42 U.S.C. §§ 5401 *et seq.*)

(2) Provided that the term **MOBILE HOME** also shall not be defined so as to include travel trailers, campers, self-contained motor homes or camper buses.

NON-CONFORMING USE. Any legally existing use, within a building, or on a tract of land that does not conform to the use regulations of this chapter for the district it is located in, either on the effective date of the chapter or as a result of amendments made later.

OWNER. Any person or other legal entity having title or a proprietary interest in a property.

PLANNING AREA. The area of land within the corporate limits of the town.
(Prior Code, Ch. 9, Art. III) (Ord. 1987-2, passed 2-2-1987)

§ 152.004 CONFLICTS WITH OTHER PROVISIONS.

This chapter is not intended to change or alter any easement, covenant, restriction, or private agreement, except that if this chapter is more restrictive, this chapter shall prevail. If the provisions of an easement, covenant, restriction, or private agreement are more restrictive, the provisions shall remain in force.

(Prior Code, Ch. 9, Art. X) (Ord.1987-2, passed 2-2-1987)

§ 152.005 ENFORCEMENT.

(A) *Town Council President responsible.* It shall be the duty of the Town Council President to enforce this chapter, and any violations or non-compliance will be referred to the Town Attorney for legal action.

(B) *Permit issuance.* Any person who has the duty to issue permits shall obey the provisions of this chapter, and shall not issue permits for any building, use, or purpose in conflict with this chapter. Any permit inadvertently issued in conflict with this chapter shall be null and void.

(Prior Code, Ch. 9, Art. XI) (Ord.1987-2, passed 2-2-1987)

ESTABLISHMENT OF ZONING DISTRICTS

§ 152.020 BASIC DISTRICTS.

The planning area is divided into the following districts:

(A) A-1: Agricultural District;

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(B) BLM-1: Business and Light Manufacturing District;

(C) I-1: Industrial District;

(D) R-1: Residential District; and

(E) R-2: Residential District.

(Prior Code, Ch. 9, Art. IV, § 1) (Ord. 1987-2, passed 2-2-1987)

§ 152.021 TOWN ZONING MAP.

(A) The Zoning Districts shown on the Town Zoning Map, and notations on the map, are a part of this subchapter.

(B) The Town Zoning Map shall have the signatures of the Town Council President and the Plan Commission President, certifying that this is the Town Map referred to in this subchapter. (Prior Code, Ch. 9, Art. IV, § 2) (Ord. 1987-2, passed 2-2-1987)

§ 152.022 ZONING DISTRICT BOUNDARIES.

(A) Boundaries shown that approximately follow center lines of streets, highways, alleys, streams, rivers, railroad rights-of-way, platted lot lines; or parallel to or extensions of, these features shall be construed as following these lines.

(B) Where physical or cultural features exist on the ground are different than the Zoning Map, or in other circumstances not covered in division (A) above, the Plan Commission shall determine the boundaries.

(Prior Code, Ch. 9, Art. IV, § 3) (Ord. 1987-2, passed 2-2-1987)

PERMITTED USES AND STRUCTURES IN DISTRICT

§ 152.040 A-1 AGRICULTURAL DISTRICT.

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Single and multi-family dwellings, mobile homes, compact homes, manufactured homes, and structures in support of agricultural operations and/or other agricultural pursuits, except for the raising or harboring of livestock, fowls, or other domestic animals within the corporate limits; that may be prohibited by other town ordinances.

(Prior Code, Ch. 9, Art. V, § 1) (Ord.1987-2, passed 2-2-1987)

§ 152.041 BLM-1 BUSINESS AND LIGHT MANUFACTURING DISTRICT.

(A) Business and Light Manufacturing District is to provide use of land for light manufacturing, assembly or processing plants, warehousing, wholesaling, and storage; all of which operations shall be conducted entirely within an enclosed building.

(B) Also provided in this district is the use of land for **BUSINESS** as defined in § 152.003, including but not limited to, retail stores, service stores, professional services, entertainment establishments, motels, hotels, single and multi-family dwellings, government operations, and similar businesses serving the public.

(C) None of the above shall be allowed to be objectionable uses due to potential noise, increased pedestrian and vehicular traffic, noxious odors, air pollutants, reduction in property values, or other conditions that might interfere with the general welfare of the surrounding area; and all uses shall be and remain compatible with, or in logical transition to, any surrounding or adjacent commercial or residential area.

(Prior Code, Ch. 9, Art. V, § 2) (Ord.1987-2, passed 2-2-1987)

§ 152.042 I-1 INDUSTRIAL DISTRICT.

Processing, manufacturing, bulk storage, transportation, and storage of goods and supporting activities, compact homes, manufactured homes, single and multi-family dwellings.

(Prior Code, Ch. 9, Art. V, § 3) (Ord.1987-2, passed 2-2-1987)

§ 152.043 R-1 RESIDENTIAL DISTRICT.

Single and multi-family dwellings, manufactured homes, mobile homes, mobile home parks, apartments, churches, schools, parks, government, cultural, and similar public service activities.

(Prior Code, Ch. 9, Art. V, § 4) (Ord.1987-2, passed 2-2-1987)

§ 152.044 R-2 RESIDENTIAL DISTRICT.

Single and multi-family dwellings, apartments, compact homes, churches, parks, government, cultural and similar public service activities.

(Prior Code, Ch. 9, Art. V, § 5) (Ord.1987-2, passed 2-2-1987; Am. Ord. 1988-5-6, passed 6-6-1988)

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MOBILE HOMES

§ 152.060 MOBILE HOME PARKS DEFINITION.

(A) For the purpose of this subchapter, the following definition shall apply unless the context indicates or requires a different meaning.

(B) A ***MOBILE HOME PARK*** shall be defined as an area of land on which there is located more than 1 mobile home for the purpose of being occupied with or without cost to the owner or occupant.

(Prior Code, Ch. 9, Art. VI, § 1) (Ord.1987-2, passed 2-2-1987)

§ 152.061 LOCATION CRITERIA.

(A) There shall be no more than 1 mobile home on any lot. The placement of the mobile home must comply with all set back ordinances of the Town of Spencer.

(B) Each mobile home, including any expanded portions, shall be at least 20 feet from every other mobile home in the park.

(C) Each mobile home shall be enclosed around the bottom with at least 1 access opening large enough to permit inspection of water and sewer connections. The enclosure material shall be of a non-combustible material, except that wood may be used for the framework of the enclosure.

(D) Each mobile home lot shall abut directly on a road, driveway, or parking lot. There shall be no dead-end streets for vehicle traffic in a mobile home park.

(E) Hard surface area of sufficient size shall be provided for each mobile home as a base for steps to the mobile home, and each mobile home shall have a hard-surface walk to connect the steps with a street, road, driveway or parking lot.

(F) There shall be a house number clearly visible on each mobile home that conforms to the United States Postal Service requirements.

(G) A mobile home cannot be, or remain occupied, if all utility services are not available or are not connected.

(Prior Code, Ch. 9, Art. VI, § 2) (Ord.1987-2, passed 2-2-1987; Am. Ord. 1997-12, passed 10-20-1997)

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§ 152.062 APPROVAL FOR MOBILE HOME PARKS.

Any person desiring to build a new mobile home park or change or alter a mobile home park, must submit a written request, together with a plan, that meets the criteria of this subchapter to the Plan Commission. Each plan shall include a detailed drawing of the location of the lot or lots by number and the exact locations of property lines, streets, and sidewalks of each proposed mobile home to be placed in the mobile home park.

(Prior Code, Ch. 9, Art. IV, § 3) (Ord. 1987-2, passed 2-2-1987)

SPENCER ADVISORY BOARD OF ZONING APPEALS

§ 152.080 MEMBERSHIP OF BZA.

(A) *Number of members.* The BZA shall consist of 5 members:

(1) Three citizen members are appointed by the President of the Town Council; 1 must be a member of the Plan Commission, 2 shall not be members of the Plan Commission;

(2) One citizen member is appointed by the Town Council, who shall not be a member of the Plan Commission; and

(3) One citizen member is appointed by the Plan Commission, who must be a Plan Commission member, and cannot be the same person as appointed by the Town Council President in division (A)(1) above.

(B) *Requirements.* No member of the BZA shall hold other elected or appointed office except as permitted in I.C. 36-7-4-902; in town, county or state government. All members of the BZA must reside in Spencer.

(C) *Length of term.* Each BZA member serves a 4 year term, and shall take an oath of office to be filed in the Clerk-Treasurer's office.

(D) *Conflict of interest.*

(1) Any member of the BZA who has a direct or indirect financial interest in a zoning matter cannot participate in a hearing or decision that is before the BZA.

(2) A member with a conflict of interest may be represented by an alternate on the BZA. The alternate shall be appointed by the party who appointed the member who has a conflict of interest.

(Prior Code, Ch. 9, Art. VIII, § 1) (Ord. 1987-2, passed 2-2-1987)

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§ 152.081 ORGANIZATION OF THE BZA.

At the first meeting each year, the BZA shall elect a Chairperson and a Vice-Chairperson from its membership.

(Prior Code, Ch. 9, Art. VIII, § 2) (Ord. 1987-2, passed 2-2-1987)

§ 152.082 MEETINGS.

The BZA shall meet at the times as called by the chairperson, and at the Municipal Building.

(Prior Code, Ch. 9, Art. VIII, § 3) (Ord. 1987-2, passed 2-2-1987)

§ 152.083 MINUTES AND RECORDS.

The BZA shall keep minutes and records of all of its proceedings:

(A) All minutes and records are public records and shall be kept in the Municipal Building.

(B) The BZA shall, in all cases heard by it, make written findings of fact.

(C) Votes on any BZA action shall be recorded.

(Prior Code, Ch. 9, Art. VIII, § 4) (Ord. 1987-2, passed 2-2-1987)

§ 152.084 QUORUM.

A quorum shall consist of a majority of the entire membership of the BZA.

(Prior Code, Ch. 9, Art. VIII, § 5) (Ord. 1987-2, passed 2-2-1987)

§ 152.085 ADOPTION OF RULES.

The BZA shall adopt rules for the filing of appeals, the applications for variances and exceptions, the giving of notice and the conduct of hearings.

(Prior Code, Ch. 9, Art. VIII, § 6) (Ord. 1987-2, passed 2-2-1987)

§ 152.086 POWERS AND DUTIES.

The BZA shall hear and determine appeals from, and review:

(A) Any order, requirement, decision or determination made by any official except the Plan Commission in relation to enforcement of the Zoning Ordinance.

(B) The BZA shall approve or deny all:

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- (1) Special exceptions;
- (2) Special uses;
- (3) Contingent uses; and
- (4) Conditional uses as specified in the Zoning Ordinance.

(C) The BZA may impose reasonable conditions as part of its approval.
(Prior Code, Ch. 9, Art. VIII, § 7) (Ord. 1987-2, passed 2-2-1987)

§ 152.087 VARIANCE OF USE.

(A) The BZA shall approve or deny variances of use from the terms of the Zoning Ordinance. The BZA may impose reasonable conditions as a part of its approval.

(B) A variance may be approved upon a determination in writing that:

(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

(3) The need for the variance arises from some condition peculiar to the property involved.

(4) The strict application of the Zoning Ordinance will constitute unnecessary hardship if applied to the property involved.

(5) The approval is substantially in accord with the Master Plan.
(Prior Code, Ch. 9, Art. VIII, § 8) (Ord. 1987-2, passed 2-2-1987)

§ 152.088 VARIANCES FROM DEVELOPMENTAL STANDARDS.

(A) The BZA shall approve or deny variances from the developmental standards of the Zoning Ordinance.

(B) Approval can be granted upon a written determination that:

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(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

(3) The strict application of terms in the Zoning Ordinance will result in practical difficulties in the use of the property.

(Prior Code, Ch. 9, Art. VIII, § 9) (Ord. 1987-2, passed 2-2-1987)

§ 152.089 GROUNDS OF APPEAL; RECORDS; DECISIONS.

(A) (1) An appeal filed with the BZA shall specify the grounds of the appeal and be filed by the rules prescribed by the BZA.

(2) Upon request of the BZA, all documents and/or data concerning an appeal are to given to the BZA (certified copies are acceptable).

(B) Upon appeal, the BZA may reverse, affirm or modify the order, requirement, decision, or determination made by other Boards or Commissions. For this purpose, the BZA has all of the powers of the official, Board, Commission, or body from which the appeal was taken.

(C) (1) The BZA shall make a decision either at the meeting where the matter is first presented or at the conclusion of the hearing on the matter, if it is continued.

(2) Within 5 days after a decision is rendered, the BZA shall file a copy of the decision in the BZA files at the Municipal Building.

(Prior Code, Ch. 9, Art. VIII, § 10) (Ord. 1987-2, passed 2-2-1987)

§ 152.090 BZA HEARINGS ON APPEALS, EXCEPTIONS.

(A) The BZA shall fix a reasonable time for hearings:

(1) Public notice as required in I.C. 5-3-1-2 and I.C. 5-3-1-4, and due notice to interested parties shall be given at least 10 days before the date set for a hearing. The BZA shall, by rules, determine who are interested parties and how they are to be notified.

(2) The petitioner for an appeal may be required to pay for the cost of public notice and due notice to interested parties.

(3) At the hearing, each party may appear in person, by agent or by attorney.

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(4) Any person may appear to present relevant evidence.

(B) A person shall not communicate with any member of the BZA before a hearing with the intent to influence the BZA member's action on a matter being heard.
(Prior Code, Ch. 9, Art. VIII, § 11) (Ord. 1987-2, passed 2-2-1987)

§ 152.091 REMEDIES FOR THE AGGRIEVED.

An aggrieved person must file in the Owen County Circuit Court within 30 days after the date of the BZA decision that he or she feels aggrieved by it.
(Prior Code, Ch. 9, Art. VIII, § 12) (Ord. 1987-2, passed 2-2-1987)

§ 152.092 CRITERIA FOR GRANTING EXCEPTIONS, VARIANCES.

(A) The BZA shall investigate each proposed use to determine if it is related to adjacent land use and with other uses permitted in the Zoning District.

(B) The BZA shall hold a public hearing on each request for an exception or variance in a Zoning District.

(C) The BZA may require that adequate landscaping or buffering is provided.

(D) The BZA may require that off-street parking is provided.

(E) The BZA may impose other conditions to insure that compatibility with surroundings are maintained.

(F) If a person was granted a special exception or variance and does not comply with any of the above, the BZA may terminate the exception or variance.
(Prior Code, Ch. 9, Art. VIII, § 13) (Ord. 1987-2, passed 2-2-1987)

§ 152.093 SPECIAL CONDITIONS.

(A) (1) Junk and wrecked auto yards with proper state approval and licensing may be granted in I-1 Districts only.

(2) The yards must be entirely enclosed by a fence or wall, except for driveways, so that no junk or wreckage can be seen from adjacent areas.

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(B) Home businesses shall be limited to activities such as operation of an office, a personal service business, or the creation and/or sale of arts and crafts. The operation of a home business shall normally be confined to the residents of the dwelling unit.

(1) Except for the creation/production of arts and crafts, there shall be no goods, samples, materials, or other objects sold, stored, displayed manufactured, or proceeded on the premises in connection with the operation.

(2) Home business activity shall be confined to the dwelling unit or garage, and shall not be more than 10% of the total ground floor area.

(3) Off-street parking may be required by the BZA for customers of a home business.

(C) Kennels or other uses that entail boarding, training, or raising dogs, cats, birds, or other animals shall not be permitted in Residential Zoning Districts unless by special exception granted by the BZA.

(D) (1) Repair shops for cars, trucks, tractors, lawnmowers, chainsaws, or other pieces of engine-driven equipment shall not be permitted in Residential Zoning Districts unless by special exception granted by the BZA.

(2) Repair shops in any district shall provide off-street parking for vehicles or other items being held for repair.

(E) Other uses may be granted by the BZA when it determines that the use will be compatible and that other conditions essential to maintain the character of the zone are met. (Prior Code, Ch. 9, Art. VIII, § 14) (Ord. 1987-2, passed 2-2-1987)

NON-CONFORMING USES

§ 152.110 CONTINUANCES OF USE.

(A) A non-conforming use in existence at the time of the enactment of this subchapter may be continued unless it is restricted in this subchapter.

(B) Repairs and alterations that are normal to any building, or maintenance, may be performed on non-conforming structures, if necessary for public health, safety, or appearance.

(C) A non-conforming use may be changed to a conforming use, but shall not be changed to another non-conforming use.

(Prior Code, Ch. 9, Art. IX, § 1) (Ord. 1987-2, passed 2-2-1987)

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§ 152.111 NON-CONFORMING USE CESSATION.

(A) If for a continuous period of 6 months, a non-conforming use has ceased, or is removed and has not been replaced, the building or land shall be used only for a conforming use thereafter.

(B) Mobile homes located in R-2 Residential Districts are non-conforming usage. Upon removal of a mobile home from any lot, mobile home park, or other location in R-2, it shall not be replaced without the written approval of the BZA.

(Prior Code, Ch. 9, Art. IX, § 2) (Ord. 1987-2, passed 2-2-1987)

§ 152.112 ZONING DISTRICT CHANGES LIFE SERVICES.

If the boundaries of a Zoning District are changed and it transfers an area from one district to another district with a different zoning classification, the provisions of §§ 152.110 and 152.111 shall apply to non-conforming uses then existing in the new district.

(Prior Code, Ch. 9, Art. IX, § 3) (Ord. 1987-2, passed 2-2-1987)

OFF-STREET PARKING AND LOADING

§ 152.125 SCOPE.

In all Zoning Districts, off-street parking facilities for the storage and parking of self-propelled motor vehicles for the use of occupants, employees and patrons of the buildings hereafter erected, altered so as to require a building permit or extended after the effective date of this subchapter, shall be provided as herein prescribed. The space shall be maintained and shall not be encroached upon so long as the main building or structure remains, unless an equivalent number of the spaces are provided elsewhere in conformance with this subchapter. Any deviation from this subchapter may be granted by the Board of Zoning Appeals after the filing of a petition and notice and hearing. The Board of Zoning Appeals must enter specific findings prior to granting such a request finding the following herein.

(Prior Code, Ch. 24, § 24.1) (Ord. 1996-11, passed 11-4-1996)

§ 152.126 PARKING AREA.

For the purpose of this subchapter, the average parking area consisting of a parking space and adjacent maneuvering aisle space, shall be deemed to be 300 square feet.

(Prior Code, Ch. 24, § 24.2) (Ord. 1996-11, passed 11-4-1996)

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§ 152.127 PARKING SPACE.

Each parking space shall contain a minimum of 180 square feet, and shall have a direct means of ingress and egress from a public right-of-way.

(Prior Code, Ch. 24, § 24.3) (Ord. 1996-11, passed 11-4-1996)

§ 152.128 LOCATION OF PARKING.

The off-street parking required by this subchapter shall be provided in accordance with the following requirements:

(A) *One and 2 family dwellings.* The off-street parking facilities required for 1 and 2 family dwellings shall be located on the same lot or plot of ground as the building they are intended to serve. Parking is limited to the driveway only and 1 additional parking lane may be allowed with approval. Parking spaces may not be located in the front yard.

(B) *Multiple family dwellings.* The off-street parking facilities for multi-family dwellings shall be located on the same lot or plot of ground as the dwellings they are intended to serve, and shall consist of a parking lot as defined elsewhere in this subchapter. In no event shall any uncovered parking space in a multi-family district be located nearer than 10 feet to any main building. Parking spaces may not be located in the front yard except as provided in § 152.130 (C)(2) herein under.

(C) *Mobile home parks.* Off-street parking required may be located on each site or in parking lots conveniently located and readily accessible to each site. Each parking space must meet the minimum requirements. In no event shall any uncovered parking space in a mobile home park be located nearer than 10 feet to any main building.

(D) *Other land uses.* The off-street parking, other than that addressed under divisions (A) through (C) above required, may be located on each site or in parking lots conveniently located and readily accessible to each site. Each parking space must meet the minimum area requirements and meet any other engineering standards as deemed necessary by the Planning Commission.

(Prior Code, Ch. 24, § 24.4) (Ord. 1996-11, passed 11-4-1996)

§ 152.129 PARKING LOT REQUIREMENTS.

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All parking facilities, including driveways and maneuvering areas, required for uses mentioned in § 152.132 of this subchapter (except for single family dwellings with a driveway with a slope of 2% or less) shall be hard-surfaced with a pavement having an asphalt or concrete binder, shall be 2% or less) shall be hard-surfaced with a pavement having an asphalt or concrete binder, shall be graded and drained so as to dispose of surface water which might accumulate within or upon the area, and shall be completely constructed prior to a certificate of occupancy being issued. No additional surface water from the parking area shall be permitted to drain onto adjoining property unless a watershed easement has been obtained. The BZA may grant an extension for the placing of the hard surface for up to 1 year due to weather and settling. However, the petitioner must post an adequate bond or other assurances for this extension to be granted.

(Prior Code, Ch. 24, § 24.5) (Ord. 1996-11, passed 11-4-1996)

§ 152.130 PARKING LOT PLANS.

(A) The construction of any parking lot shall be in accordance with the requirements of this subchapter and the construction shall be completed and approved by the Building Commissioner before actual use of the property as a parking lot and before a certificate of occupancy is issued.

(B) Plans for the development of any parking lot must be submitted to the Building Commissioner, prepared at a scale of not less than 1 inch equals 50 feet and indicating existing and proposed grades, drainage, pipe sizes, parking of all dimensions, type of curbing, drive and aisle dimensions, lighting, adjacent main buildings, sidewalks, landscaping, surfacing and base materials to be used and the layout of the proposed parking lot. All parking lots exceeding 10% coverage of any lot shall require a building permit.

(C) The plans are to be prepared in a presentable form by person or persons competent in the work and shall reflect conformance with the following provisions:

(1) All illumination for or on all the parking lots shall be deflected away from adjacent residential areas and roadways and shall be installed in such a manner as to allow the reduction of the amount of light on other than normal parking hours each day. The source of illumination in all parking lots abutting a residential area shall not be more than 20 feet above the parking lot surface.

(2) The required front yard setback area in a multi-family residential area shall be maintained as a green area. In cases of difficult topography, the Building Commissioner may allow the parking lots to extend into the front setback area provided that the average of front setback areas totals at least 30 feet from any public street right-of-way in no case shall the parking lot be any closer than 10 feet to a public street right-of-way.

(3) When a parking lot or area for a non-residential use is situated in a parcel that adjoins a residential district or use, the respective side and rear yard setback in which the parking is located shall be a minimum of 45 feet of which 20 feet nearest the respective property line is developed as a greenbelt; extending from the front yard setback to the rear yard setback in the

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case of the side yard parking adjoining residential use, or the width of the rear of the lot in the case of rear yard parking adjoining the residential use.

(4) Adequate ingress and egress to the parking lot, by means of limited and clearly defined drive or drives, shall be provided for all vehicles.

(5) Wheel stops shall be provided and so located as to prevent any vehicle from projecting over the lot or setback lines.

(6) Plans for the layout of off-street parking facilities shall be in accordance with the following minimum regulations: The minimum parking space dimensions for a layout not provided for in the following regulations shall be 9 feet in width, 20 feet in length and 180 square feet in area.

(Prior Code, Ch. 24, § 24.6) (Ord. 1996-11, passed 11-4-1996)

§ 152.131 PARKING RESTRICTIONS.

Off-street and on-street parking of vehicles shall be further restricted by the following requirements: After the effective date of this subchapter, it shall be unlawful for the owner, tenant or lessee of any lot, parcel or tract of land in a Residential District or in the residential area of any other district, to permit or allow the open storage or parking, either day or night, thereon of trucks, semi trucks and trailers, mobile homes, tractors, bulldozers, earth carriers, drag lines, cranes, steam shovels and/or any other equipment or machinery. It is provided, however, that the owner, tenant or lessee of a farm may openly store the machinery and equipment used on his or her farm; and it is further provided that equipment necessary to be parked overnight on a lot, parcel or tract of land during construction work thereon shall be exempted from this restriction. Violations shall be subject to penalties of fines, imprisonment or both. This shall not apply to pickup or panel trucks.

(Prior Code, Ch. 24, § 24.7) (Ord. 1996-11, passed 11-4-1996)

§ 152.132 TABLE OF OFF-STREET PARKING REQUIREMENTS.

The amount of required off-street parking spaces by type of use shall be determined in accordance with the following tables and with the exception of Residential, must comply with the American Disabilities Act (ADA) guidelines:

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Residential	
One and 2 family	2 per each dwelling unit

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<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Multiple family and attached single family	2 per each dwelling unit
Mobile home parks	2 per each mobile home unit
Boarding house	1 per each sleeping room

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Institutional	
Hospitals	1 per each 2 beds plus per staff doctor, plus per 2 employees
Libraries and museums	1 per each 400 square feet of UFA
Private clubs and lodges	1 per each 3 individual members allowed within the maximum occupancy load as established by local, county, state, fire, health or building codes
Church	1 per 4 members/seats
Private tennis club, swim club, golf club, or other similar use	1 per each 2 member families or individuals, plus amount required for accessory uses
Single screen/stage theaters, auditoriums and assembly halls	2 per each 5 seats based on the maximum seating capacity in the main place of assembly therein, plus per each 2 employees
Multi-screen/stage theaters	3 per each 10 seats based on the maximum seating capacity in the main place of assembly therein
Sanitariums, convalescent homes	1 per each 4 beds
Homes for the aged, nursing homes	1 per each staff doctor
Children's homes	1 per each 2 employees
Stadiums and sports arenas	1 per each 4 seats or 8 feet of bench

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<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Business and Commercial	
Animal hospitals and kennels	1 per each 400 square feet UFA, plus 1 per each 2 employees
Auto salesrooms, wholesale stores, machinery sales and other similar uses	1 per each 300 square feet UFA plus 1 per each employee
Auto garages, auto repair shops, collision or bump shops, or other similar uses	1 per each 800 square feet plus 1 per each 2 employees computed on the basis of the maximum number of employees on duty at any 1 time, plus 2 per each stall or service area
Vehicle service stations, filling stations	2 per each service stall, plus 1 per each employee, plus 1 per each service area
Vehicle wash establishments	1 per each employee, plus sufficient parking to enable 1 vehicle per workstation
Barber shops	2 per each barber
Beauty shops	3 per each beauty operator
Bowling alleys	6 per bowling lane plus amount required for accessory uses
Dance halls, exhibition halls, pool halls, billiard parlors, and assembly halls without fixed seats	1 per each 2 persons allowed within the maximum occupancy load as established by local county or state fire, health or building codes
(OR)	1 per each 100 square feet UFA, whichever is greater
Daycare centers	1 per 2 employees, plus 1 per 5 children
Drive-in restaurants or similar drive-in uses for the sale of food, beverages or refreshments	1 per each 50 square feet GFA, plus 1 per each 3 employees
Drive-in theater	1 per each outdoor speaker facility, plus 1 per each 3 employees
Furniture, appliances and household equipment, repair shops, hardware stores	1 per each 800 square feet of UA, plus 1 per each 2 employees

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Use	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
and other similar uses	
Laundromat, coin operated dry cleaning establishment	1 per each 2 washing and dry cleaning machines
Miniature or "Par 3" golf course	2 per each hole, plus 1 per each 2 employees
Mortuary establishments, funeral homes, undertaking parlors	1 per each 50 square feet of parlor area
Motels, hotels, tourist homes	1 per each guest bedroom, plus 1 per each employee, plus amount required for accessory uses
Open air business (not otherwise provided for herein)	1 per each 800 square feet of lot area used for the business
Personal service establishment (not otherwise provided for herein)	1 per each 300 square feet of UFA, plus 1 per each 2 employees
Restaurants and other establishments (other than drive-in restaurants) in which is conducted the sale and consumption on the premises of food, beverages or refreshments	1 per each 3 persons allowed within the maximum occupancy load as established by local, state or county fire health or building codes, plus 1 per each 3 employees
(OR)	1 per each 700 square feet UFA, plus 1 per each 3 employees, whichever is greater
Retail stores, except as otherwise specified herein	1 per each 200 square feet of GFA, plus 1 per each 3 employees
Roadside stands	5 for each establishment

Use	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Offices	
Banks (other than drive-in banks), post offices	1 per each 200 square feet UFA, plus 1 per each employee
Business and professional offices	1 per each 300 square feet GFA

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<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Drive-in bank	4 standing spaces per each outside teller window, plus normal requirements for banks
Medical clinic and dental clinic	4 per each staff or visiting doctor, plus 1 per each employee

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<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit Of Measure As Follows</i>
Industrial	
Industrial or manufacturing establishments, research establishments	1 per each 1-1/2 employees computed on the basis of the greatest number of persons employed at any 1 time, day or night
(OR)	2 per each 2,000 square feet GFA, whichever is greater
Warehouses and storage buildings	1 per each 2 employees computed on the basis of the greatest number of persons employed at any 1 time, day or night
(OR)	1 per each 2,000 square feet GFA, whichever is greater

(Prior Code, Ch. 24, § 24.8) (Ord. 1996-11, passed 11-4-1996)

§ 152.133 MISCELLANEOUS OFF-STREET PARKING PROVISIONS.

(A) (1) *Existing off-street parking at effective date of subchapter.* Off-street parking existing at the effective date of this subchapter which serves an existing building or use, shall not be reduced in size to less than that required under the terms of this subchapter. This section excludes metered parking areas.

(2) *Fractional requirements.* When units or measurements determining number of required parking spaces result in requirement of a fractional space, any fraction up to and including 1/2 may be disregarded and fractions over 1/2 shall required 1 parking space.

(3) *Other requirements.* Requirements for a use not mentioned shall be the same for that use which is most similar to the use not listed.

(4) *Additional parking.* Additional parking shall be provided and maintained in proper ratio to any increase in floor area or building use capacity.

(B) For the purposes of determining off-street parking and loading requirements, the following provisions shall apply:

(1) In mercantile establishments, usable floor area (UFA) shall mean the floor area used for service to the public. It shall not include floor area used for storage or the processing and packaging of merchandise where it is carried on in a room in which service to the public is not involved.

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(2) In hospitals, bassinets shall not be counted as beds.

(3) Where benches, pews or other similar seating facilities are used as seats, every 24 inches of the seating facilities shall be counted as 1 seat.

(4) In the case of mixed uses in the same building, the total requirements for off-street parking and loading shall be the sum of the requirements for the different individual uses computed separately. In the event that the uses are non-concurrent, the requirement shall be the greater of the individual, non-concurrent use requirements.

(5) Joint or collective provision of off-street parking for buildings or uses of 2 or more properties shall not be less than the sum of the requirements for the participating individual uses computed separately.

(Prior Code, Ch. 24, § 24.9) (Ord. 1996-11, passed 11-4-1996)

§ 152.134 OFF-STREET LOADING REQUIREMENTS.

(A) On the same premises with every building or part thereof erected and occupied for manufacturing, storage, warehouse, goods display, department store, wholesale, market, hotel, hospital, laundry, dry cleaning, or other similar use involving the receipt or distribution of vehicles, material or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading or unloading services in order to avoid undue interference with street or parking areas.

(B) The loading and unloading space or spaces, unless completely and adequately provided for within a building, shall be a minimum area of 10 feet by 25 feet with 14 foot height clearance, and shall be provided according to the following schedule:

<i>Gross Floor Area In Square Feet</i>	<i>Loading And Unloading Spaces Required In Terms of Square Feet of Gross Floor Area</i>
0-2,000	None
2,000-20,000	1 space
20,000-100,000	1 space plus 1 space for each 20,000 square feet in excess of 20,000
100,000-500,000	5 spaces plus 1 space for each 40,000 square feet in excess of 100,000 square feet
Over 500,000	15 spaces plus 1 space for each 80,000 square feet in excess of 500,000 square feet

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(Prior Code, Ch. 24, § 24.10) (Ord. 1996-11, passed 11-4-1996)

§ 152.135 PARKING AND MANEUVERING LANE STANDARDS.

Parking and maneuvering areas must be designed in accordance with the following schedule:

<i>Parking Pattern (in degrees)</i>	<i>Maneuvering Lane Width</i>		<i>Parking (1) Space Width</i>	<i>Parking (2) Space Width</i>	<i>Total Width of 2 Tiers of Spaces Plus Maneuvering Lane</i>	
	<i>1-way</i>	<i>2-way</i>			<i>1-way</i>	<i>2-way</i>
0	11 feet	18 feet	9 feet	25 feet	28 feet	35 feet
30-50	12 feet	20 feet	9 feet	21 feet	54 feet	62 feet
54-74	13 feet	24 feet	9 feet	21 feet	55 feet	66 feet
75-90	15 feet	24 feet	9 feet	18 feet	51 feet	60 feet
(1) Measured perpendicular to the longitudinal space centerline						
(2) Measured along the longitudinal space centerline						

(Prior Code, Ch. 24, § 24.11) (Ord. 1996-11, passed 11-4-1996)

§ 152.999 PENALTY.

(A) *Violations are a common nuisance.* The erection, construction, enlargement, conversion, or moving of any building or structure; and the use of any land, premises, or building which is continued, operated, or maintained contrary to this chapter is a common nuisance and a violation of this chapter. The Town Attorney shall request injunction, abatement, or any appropriate action at his or her disposal to prevent, enjoin, abate, or remove violations.

(B) *Civil action against violators.* Civil suit against any violator of this chapter may be instituted by any property owner who may be especially damaged by violations of this chapter. The remedies provided for may be cumulative and in addition to any other remedies prescribed by law.

(Ch. 9, Art. XII) (Ord. 1987-2, passed 2-2-1987)

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(C) *Failure to comply.* In addition to any other remedy or penalty provided elsewhere in this chapter, any person or entity who violates or refuses compliance, or resists enforcement of this chapter may be fined up to \$1,000 by a court of competent jurisdiction.

(D) *Violations.* Any person or entity who violates this chapter who is not slated to appear in court may be subject to a fine of \$500. Alleged violators may pay to the Clerk-Treasurer the sum required within 7 days of the violation. If this fine is not paid within 7 days, suit shall be instituted for and on behalf of the town by the Town Attorney to collect the costs, including reasonable attorney fees incurred by the town for collection of the account.

(Prior Code, Ch. 9, Art. XIII) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992)

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Appendix A: Zoning Map

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CHAPTER 153: SUBDIVISION

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GENERAL PROVISIONS

§ 153.001 GENERAL REQUIREMENTS.

(A) The standards set forth in these regulations control the development of land within the jurisdiction of the town.

(1) The purpose of these regulations is to insure provision of adequate light, air, open spaces, drainage, streets and public utilities.

(2) The aim is to develop and maintain a healthy, attractive and efficiently built environment that enhances the quality of life and sustains the natural environment.

(B) (1) The Town of Spencer Comprehensive Plan adopted by the town has a vision of quality development efficiently planned with amenities to increase investment value.

(2) The subdivision regulations must implement the quality development policies found in the Comprehensive Plan.

(C) (1) New residential growth must develop within the context of the existing neighborhoods.

(2) This will add value both within the neighborhoods and to the town's regional area as

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well.

(D) (1) Zoning regulation must serve the general welfare of the entire community.

(2) Careful attention to process, public notice and record keeping is required.

(E) Technical as well as administrative early review of each case must be thorough and professional, with written minutes or reports submitted from each meeting.

(1) The idea is to take time on the front end of the process so that subdivision requirements are clear and the case is well prepared for each hearing.

(2) Adding certainty and efficiency, while gaining quality assurance, is the aim of this chapter.

(F) (1) Following state guidelines, the primary plat will be conducted as a public hearing.

(2) The secondary plat will be approved, subject to the petitioner strictly following the subdivision regulations and financially securing the cost of the infrastructure.

(G) Most smaller divisions of land will be approved at the same meeting for both primary and secondary plats.

(H) (1) As a subdivision is being built, a strict compliance with submitted plans and commitments will be mandated.

(2) A follow up by the Director of Planning Services will be required and a written report will be submitted to the Plan Commission every 6 months during the build out.

(Ord. passed - -, § 153.001)

§ 153.002 DEFINITIONS.

Except as otherwise defined in this chapter, the definitions and requirements set forth in the zoning ordinance shall apply throughout this chapter.

(Ord. passed - -, § 153.002)

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§ 153.003 GENERAL PROVISIONS.

(A) All parties who have a financial interest in the subdivision and subsequent development must be on record as agreeing with the submission provisions in the application to the Plan Commission.

(B) When it is clearly in the town's interest that a parcel should not be developed through further subdivision, the Planning Commission may reject a primary plat. Reasons for property not to be further developed include:

- (1) Property subject to flooding;
- (2) Property underlined by significant caverns and karsts features;
- (3) Property that has marketable dimension limestone;
- (4) Property with archeological significance;
- (5) Property with endangered species habitat; and/or
- (6) Property that has accumulated environmental waste.

(C) Subdivisions must comply with the Town of Spencer Comprehensive Plan.

(D) Subdivision streets must generally comply with the provisions of the Comprehensive Plan.

(E) Subdivision block length maximum is 800 feet.

- (1) Maximum cul-de-sac length is 600 feet.
- (2) Size of all cul-de-sacs will be a 40 foot radius.

(F) Subdivisions must provide utility and drainage easements on the perimeter of the property at not less than 20 feet wide.

(G) Provisions for lot width and depth are to be no more than a 4:1 ratio.

(H) (1) Provision of green space, trails, pathways, park features and playgrounds are required to meet the basic needs of each subdivision.

(2) Encouragement to add extra amenities and features that facilitate the walkability for residents may be established by the Planning Commission, and may be used to determine a density bonus of units within the subdivision.

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(I) Clustering or grouping of structures to both save on infrastructure investment and design with nature around a sensitive natural feature may be given a waiver from the strict application of the zoning code, as long as the new subdivision plat:

(1) Conforms generally to the Comprehensive Plan; and

(2) Furthers economic investment quality, health, safety and welfare of the overall community.

(J) A buffering plan to lessen the impact of different land uses may be required.

(1) The buffer may include fences, earthen berms, evergreens and/or shade trees.

(2) The design will be determined on a case-by-case basis, depending on the specific site situation.

(K) Healthy trees over a 30 inch diameter may be required to be saved and marked for conservation on the submitted site plan.

(1) Native shade trees are mandated to be planted at an average of every 50 feet in the front yard of each lot.

(2) Where possible and with the Spencer Town Council written consent, additional trees may line the streets in plots between the sidewalk and the curb.

(L) Each surveyor must follow standard professional practice and leave permanent monuments at appropriate locations.

(M) Only large lot subdivisions, each averaging 3 acres per lot with no lot less than 2 acres, may apply for a waiver of street width.

(N) Waivers from strict application of the zoning code may be requested at the time of site plan review and prior to the approval of the primary plat.

(1) The waiver may be requested for hardship related to a unique physical characteristic of the land to be developed.

(2) If an innovative or creative site plan design is submitted, a waiver may be requested, provided there is substantive research or expert opinion to support the proposed innovation.
(Ord. passed - -, § 153.003)

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APPLICATION FOR SUBDIVISION APPROVAL

§ 153.020 PRE-APPLICATION FOR SUBDIVISION APPROVAL.

(A) Prior to the filing of a formal application for approval of a preliminary plat, the petitioner shall submit to the Director of Planning Services the plans and data that outline generally the scope and intent of the proposed subdivision project.

(B) The pre-application plans and data shall include the following (a freehand sketch is acceptable):

(1) Present use and configuration of the land, including existing land uses, improvements, easements, rights-of-way, available utilities, contamination or other hazards of the land, covenants, restrictions, topography and drainage patterns.

(2) Proposed use and configuration of the land, including lot sizes, dedications of public land, dedication of rights-of-way and easements, street and utility layouts, regrading plans and drainage improvements.

(3) Proposed development name.
(Ord. passed - -, § 153.010)

§ 153.021 DIRECTOR OF PLANNING SERVICES PRELIMINARY REVIEW.

(A) The pre-application process is intended to be a reasonably informal review of the proposal.

(B) The Director of Planning Services and petitioner will jointly review the proposal for compliance with the requirements of the Comprehensive Plan, zoning and subdivision regulations.

(C) The petitioner shall deliver the plan to the respective utility organizations and the town's utility for their review and comment.

(D) The Director of Planning Services will make recommendations to the petitioner concerning changes to the plan and the filing of a formal application for preliminary plat review by the Plan Commission.
(Ord. passed - -, § 153.011)

§ 153.022 FORMAL APPLICATION.

(A) A written application for preliminary plat approval shall be filed by the petitioner with the Director of Planning Services.

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(B) The application shall be complete and shall include a copy of the proposed subdivision plan and preliminary plat.

(C) The petitioner is responsible for completing, mailing and filing notifications and legal advertisements in accordance with § 153.044.
(Ord. passed - -, § 153.012)

§ 153.023 FILING FEE.

(A) The filing fee and the costs and fees associated with the public hearing shall be as required under § 152.317, and shall be paid by the petitioner.

(B) The filing fee shall be paid prior to scheduling a date for the public hearing.
(Ord. passed - -, § 153.013)

§ 153.024 DIRECTOR OF PLANNING SERVICES FORMAL REVIEW.

(A) After receiving the formal application, the Director of Planning Services shall, within 30 days, review the proposal and make a determination concerning its conformance with the standards under this chapter.

(B) The result of the review shall be one of the following.

(1) If the Director of Planning Services determination is that the proposal does not conform to these regulations, then the application shall be returned to the petitioner for modification.

(a) However, with the concurrence of the Director of Planning Services, the petitioner may proceed with the application together with a request for any waiver by the Plan Commission; and

(b) The Director shall set a date for a public hearing within 30 days of the decision.

(2) If the Director of Planning Services determines that the proposal is in conformance with these regulations, then the Director shall set a date for a public hearing within 30 days of making the determination.
(Ord. passed - -, § 153.014)

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PRELIMINARY PLAT AND PRIMARY APPROVAL

§ 153.040 PRELIMINARY PLAT APPROVAL.

(A) The Director of Planning Services shall consider the preliminary plat at a public hearing pursuant to I.C. 36-7-4-706.

(B) At the hearing, the Plan Commission may:

(1) Grant primary approval of the plat as presented;

(2) Grant primary approval of the plat contingent on changes or revisions deemed necessary and in the interests and needs of the community;

(3) Disapprove the plat;

(4) Continue the hearing to another specified date and time; or

(5) Table the request.

(C) The Plan Commission's primary approval shall constitute authorization to proceed with construction of the required improvements, and shall precede secondary approval of the plat.

(1) Primary approval shall not qualify a plat for recording with the County Recorder.

(2) Lots may not convey title until the final secondary plat is approved and signed
(Ord. passed - -, § 153.020)

§ 153.041 NOTIFICATION OF DECISION.

(A) The Director of Planning Services shall notify the petitioner of the Plan Commission's decision within 30 days.

(B) If the preliminary plat was disapproved, the notification shall include a copy of the plat with appropriate notations setting forth the reason(s) for disapproval, and specifying with particularity the aspects in which the proposed plat fails to conform to the requirements of this chapter.

(Ord. passed - -, § 153.021)

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§ 153.042 EFFECTIVE TERM OF PRIMARY APPROVAL.

(A) Primary approval shall be effective for a maximum period of 18 months, except that, upon application by the petitioner, the Plan Commission may grant an additional 12 month extension.

(B) Once extensions have been exhausted the process must start over.
(Ord. passed - -, § 153.022)

§ 153.043 PRELIMINARY PLAT REQUIRED FORMAT.

(A) Two copies of the plat, Development Plan and supplementary data sheets shall be delivered to the Zoning Administrator for referral to the Plan Commission.

(B) (1) Paper copies of the plat and Development Plan are acceptable for primary approval.

(2) As a guide, the final plat should be submitted on 20 inch wide by 18 inch high Mylar (or equivalent).

(C) (1) The preferred scale is 100 feet to 1 inch.

(2) Other scales will be considered where the preferred scale compromises legibility.
(Ord. passed - -, § 153.023)

§ 153.044 PRELIMINARY PLAT REQUIRED INFORMATION.

The preliminary plat shall contain the following information.

(A) Name of the subdivision at the top of the plat.

(B) Scale of plat and north point.

(C) Boundary drawing as follows, based on accurate traverse:

(1) Showing angular and lineal dimensions, radii, internal angles, central angles, points of curvature and tangency, lengths of tangents and lengths of arcs;

(2) Showing true courses and distances to the nearest official monuments that shall accurately describe the location of the plat;

(3) Showing township section lines accurately tied to the lines of the subdivision by distances and courses; and

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(4) Showing municipal corporation lines within and adjacent to the tract.

(D) Boundary description by section, township and range, together with the legal description.

(E) Exact location, dimensions and names, as applicable, of the following.

(1) Existing and proposed rights-of-way, public ways and easements, labeled Public Right-of-Way, Public Way, Public Utility Easement, Public Drainage Easement or Public Utility and Drainage Easement, as appropriate.

(2) All existing or proposed streets within and adjacent to the tract, with existing and proposed names.

(a) Names of proposed streets shall, where possible, conform to the names of corresponding streets that abut and are to be extended into the subdivision.

(b) Except for the extensions, no proposed name shall duplicate that of any other street in the town.

(c) Street names for streets within the town are subject to the approval of the Town Council.

(3) Proposed parks and other open public spaces, and parcels of land to be dedicated or temporarily reserved for public use or set aside for use of the property owners in the subdivision.

(4) Permanent buildings or structures.

(5) In the case of a re-plat, all the descriptive lines of the original plat being vacated shall be shown by dotted lines in their proper position in relation to the new arrangement of the plat, the new plat being clearly shown in solid lines so as to avoid ambiguity or confusion.

(6) Contours of the land as follows.

(a) Where slopes are less than 20%, show vertical intervals of 1 foot.

(b) Where slopes exceed 20%, show vertical intervals of 5 feet.

(7) Where lands are identified as flood hazard areas, show:

(a) The elevation of the regulatory flood; and

(b) The area subject to inundation by the regulatory flood.

(8) Layout and numbering of lots.

Subdivision

(9) Dimensions on all lots, including lines, arcs, curves and easements.

(10) Building setback lines with dimensions.

(F) The private restrictive covenants, if desired, for the plat.

(G) A notation shall be included stating that none of the terms of the plat, except the private restrictive covenants, shall be changed without the approval of the Plan Commission.

(H) The following certifications, names and signatures, in the order shown:

(1) Property owner(s) names and signatures, with the acknowledgment of a notary public.

(2) Petitioner(s) names and signatures, with the acknowledgment of a notary public, if other than the property owner(s).

(3) Signature, registration number and seal of the registered professional land surveyor preparing the plat.

(4) Certification of the President and Secretary of the Plan Commission.

(5) Certification of the Town Council President and the Clerk-Treasurer.
(Ord. passed - -, § 153.024)

FINAL PLAT AND SECONDARY APPROVAL

§ 153.060 SECONDARY APPROVAL.

(A) After primary approval of the plat by the Director of Planning Services, the petitioner shall proceed to install the improvements required by the primary approval.

(B) When the required improvements have been installed and otherwise completed, inspected and accepted by the appropriate utilities and all terms and conditions of the primary approval have been satisfied, the plat or an approved phase thereof, may be granted secondary approval.

(1) No notice or hearing is required for secondary approval.

(2) The Planning and Zoning Administrator, under the authority given by the Plan Commission, has the authority to grant secondary approval, as long as the proposed plat submitted for secondary approval is substantially in compliance with the preliminary plat approved by the Plan Commission.

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(3) Secondary approval for minor subdivisions may be requested at the primary approval hearing.

(C) A plat may not be filed and recorded with the County Auditor unless the Plan Commission has granted secondary approval.
(Ord. passed - -, § 153.030)

§ 153.061 RECORDING OF APPROVED PLAT.

(A) Within 60 days after the secondary approval of a plat or a phase thereof, the petitioner shall have a fully-signed original of the plat recorded with the County Recorder, and shall deliver 1 copy of the recorded plat to the following agencies:

- (1) The town; and
- (2) The County Auditor.

(B) The petitioner shall be responsible for payment of all fees required for recording and copying of the plat.
(Ord. passed - -, § 153.031)

§ 153.062 FAILURE TO RECORD PLAT.

If the final plat is not filed and recorded within 60 days following secondary approval, it shall have no validity and shall not be recorded except by re-certification and re-approval of the Plan Commission.
(Ord. passed - -, § 153.032)

§ 153.063 PHASING OF CONSTRUCTION.

(A) Where it is in the interest of the petitioner to complete construction of the improvements required by the primary approval in phases rather than at once, the petitioner shall so state in writing to the Plan Commission, and deliver the request, together with maps and drawings showing the intended phasing of the project.

(B) The Plan Commission may, at its option, provide secondary approval to each phase as it is built, provided that at no time shall the phasing plan produce an unsafe condition or utility layout that is not in compliance with the requirements of Indiana law or this code.
(Ord. passed - -, § 153.033)

Subdivision

§ 153.064 SECONDARY APPROVAL PRIOR TO COMPLETION OF IMPROVEMENTS.

(A) Pursuant to I.C. 36-7-4-709, the Plan Commission may grant secondary approval of a plat prior to completion of the improvements required under the primary approval, provided that the petitioner files 1 or more security instruments with the Clerk-Treasurer, which shall be in an amount determined by the Director of Planning Services and approved by the Plan Commission, as sufficient to complete the required improvements and installations.

(B) Acceptable security instruments include:

(1) A subdivision or performance bond;

(2) A cash bond held in an escrow account;

(3) A certificate of deposit held in the joint names of the petitioner and the town, or assigned to the town;

(4) An irrevocable letter of credit issued to the town, with terms acceptable to the Town Council;

(5) A bond secured with real estate in which the petitioner has marketable fee simple title.

(C) The security instrument that is accepted shall name or run to the Town Council for the estimated time of completion of the improvements, and shall include terms and conditions acceptable to the Board of Public Works and Safety, to ensure that the improvements shall be completed within the allotted time.

(D) Any terms providing for reductions in the face amount of an instrument during the course of installation of improvements shall include a requirement that the Town Council approve any and all reductions.

(Ord. passed - -, § 153.034)

§ 153.065 DETERMINATION OF COMPLIANCE WITH PRIMARY APPROVAL.

(A) The Director of Planning Services shall assist the Plan Commission in determining compliance with the requirements of the primary approval.

(B) In so assisting, the Director of Planning Services shall require a finding by all interested utilities or the County Commissioners, as appropriate, that all required public infrastructure has been installed in accordance with the primary approval.

(Ord. passed - -, § 153.035)

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§ 153.066 EVIDENCE OF COMPLIANCE WITH PRIMARY APPROVAL.

(A) Satisfactory evidence that the improvements and installations required under a primary approval have been completed and are in accordance with the requirements of this chapter shall include, but not be limited to, all of the following:

(1) Submission of satisfactory test results for all systems that require testing to meet design, local, state and/or federal requirements;

(2) Submission of letters from all private utility agencies and organizations, and/or the town's utilities, stating that the installation of public utility lines and public works has been accomplished in full compliance with the plans and specifications of the preliminary plat and are, therefore, accepted for maintenance; and

(3) The petitioner's submission to the Director of Planning Services of a signed statement that:

(a) The petitioner has performed a review and inspection of the required improvements;

(b) The petitioner has compared those improvements to the requirements of the preliminary plat approval; and

(c) All requirements under the preliminary plat approval have been satisfactorily completed.

(B) With the approval of the Town Council, the Director of Planning Services shall make a final determination concerning the acceptability of each piece of evidence as proof of satisfactory completion of the requirements of the primary approval.
(Ord. passed - -, § 153.036)

§ 153.067 FINAL PLAT REQUIRED FORMAT.

(A) The petitioner shall submit 4 Mylar (or equivalent) tracings of the proposed final plat for original signatures.

(B) The proposed final plat shall be formatted as follows:

(1) As a guideline only, sheets should measure 20 inches in width and 18 inches in height;

(2) Where the plat has been prepared using CAD software, a copy of the plat shall be delivered to the Plan Commission on computer disk; and

(3) Scale shall be the same as that of the preliminary plat.

Subdivision

(Ord. passed - -, § 153.037)

§ 153.068 FINAL PLAT REQUIRED INFORMATION.

The information required for the preliminary plat shall also be provided on the final plat, together with any changes or additions required by the Plan Commission as conditions of primary approval.

(Ord. passed - -, § 153.038)

DEVELOPMENT PLAN

§ 153.085 APPLICABILITY.

Except as noted, the following standards apply to all Development Plans and subdivisions of land.

(Ord. passed - -, § 153.045)

§ 153.086 DEVELOPMENT STANDARDS.

In addition to the requirements under this chapter, each Development Plan for subdivision approval shall contain the requirements under Chapter 152.

(Ord. passed - -, § 153.046)

§ 153.087 SUBDIVISION AND DEVELOPMENT PLANS REQUIRED.

(A) Subdivision of land is permitted in all zoning districts within the planning and zoning jurisdiction of the town.

(B) Subdivision and Development Plans, and subdivision plats, shall be required for all subdivisions of land, except exempt subdivisions of land, in all zoning districts within the planning and zoning jurisdiction of the town.

(Ord. passed - -, § 153.047)

§ 153.088 CERTIFICATION OF DESIGN.

The design of the preliminary plat and secondary or final plat for a subdivision and each Development Plan, shall be certified by a registered professional land surveyor or engineer licensed by the State of Indiana.

(Ord. passed - -, § 153.048)

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§ 153.089 DEVELOPMENT AND SUBDIVISION PLAN APPROVAL.

(A) The Plan Commission shall approve the Development Plan and site plan for a subdivision of land that requires its approval.

(B) It is hereby required that no plat or subdivision of any lot, or any part thereof, within the town's territorial jurisdiction shall be entitled to be recorded in the county or have any validity until it has been approved in accordance with the criteria of this code.

(Ord. passed - -, § 153.049)

§ 153.090 EXEMPT SUBDIVISIONS OF LAND.

The following subdivisions of land shall be exempt from the requirements of this chapter:

(A) The division of a lot into more than 1 lot as a part of the settlement of an estate by a court of law.

(B) A division of land for a unit of government to acquire or improve a right-of-way.

(C) An adjustment of lot lines between existing adjoining lots that shall not reduce the area, frontage, width, depth or building setback lines on each lot below the minimum standards in this code, and does not change the number of lots.

(D) A division of land into cemetery plots for public or private burial.

(Ord. passed - -, § 153.050)

§ 153.091 DEVELOPMENT PLAN STANDARDS.

(A) Each Development Plan and site plan shall incorporate improvements that conform to the standards under the zoning ordinance and this chapter.

(B) Except where noted, these requirements are minimum requirements.

(C) Where necessary to accommodate the particular needs of the Development Plan and site plan under review, or the particular needs of the community outside of the proposed development that will be impacted by the development, the Plan Commission may include higher standards and greater requirements.

(Ord. passed - -, § 153.051)

Subdivision

§ 153.092 COMPLIANCE WITH COMPREHENSIVE PLAN, SUBDIVISION AND ZONING ORDINANCES.

(A) Before plan approval shall be granted, the Plan Commission shall determine if the Development Plan and site plan complies with the provisions of the Comprehensive Plan, the subdivision and zoning ordinances.

(B) In making its determination, the Plan Commission shall review the Development Plan for, but not limited to, the following.

(1) Compatibility of the Development Plan with surrounding land uses.

(2) Compatibility of the Development Plan with the recommendations of the Comprehensive Plan.

(3) Adequate provisions for internal management of traffic.

(4) Analysis of the capacity of adjacent streets to ensure that they can safely and efficiently accommodate the additional traffic generated by the development.

(5) Adequate provisions for public facilities and infrastructure, and provisions for the extension of infrastructure to adjacent developable properties.

(6) Provisions for the allocation of land for streets, parks, schools, public and semi-public buildings, homes, businesses and industry, as appropriate.

(7) Adequate on-site management of stormwater and erosion control.

(8) Adequate preservation of healthy trees over 30 inches in diameter, and conservation of sensitive and/or unique natural environments, such as view sheds, creeks, wetlands and karsts landscapes.

(C) However, compliance with these provisions shall not exclude other provisions of the Comprehensive Plan or other conditions favorable to health, safety and convenience, and the harmonious development of the territorial jurisdiction of the town.

(Ord. passed - -, § 153.052)

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§ 153.093 CONDITIONS OF THE LAND.

(A) No land shall be developed if the land:

(1) Is considered by the Plan Commission as unsuitable for the development by reason of flooding, improper drainage or any topographic feature deemed harmful to the health and safety of the community; or

(2) Shall qualify for environmental review by any environmental condition of the land, which has not been reviewed and/or remediated in accordance with federal and state laws.

(B) Due consideration shall be given by the petitioner to the prevention of air and stream pollution, preservation of trees and unique sensitive habitat, and the proper treatment and disposal of waste and refuse.

(Ord. passed - -, § 153.053)

§ 153.094 PUBLIC SITES.

(A) Whenever the reasonable requirements provided by these regulations shall indicate the necessity for providing for a school site, park or other recreational site, or other public lands within any proposed development, and if the lands have not been dedicated to the city, county, local board of education or other appropriate public agency, and if no provision has been made for the dedication, then the lands shall be reserved for acquisition, by purchase or other means, by the appropriate agency having jurisdiction over the land for a period of not less than 4 years.

(B) If the 4 years has expired without acquisition procedures having begun, the owners of the lands shall have the right to develop the lands in any other manner consistent with these regulations.

(Ord. passed - -, § 153.054)

§ 153.095 ESTIMATE OF COST OF CONSTRUCTION.

The petitioner shall employ a registered professional land surveyor or engineer to make an estimate of the probable expenditures necessary to enable the petitioner to build the required improvements in conformance with the standards established in this code and the town.

(Ord. passed - -, § 153.055)

§ 153.096 WAIVER AND MODIFICATION OF DEVELOPMENT PLAN.

Subdivision

(A) Where evidence may support a petitioner's challenge to these regulations, in that extraordinary hardship or practical difficulty may result from strict compliance with these regulations, and/or that the purpose of these regulations may be served to a greater extent by an alternative proposal, innovative concept plan or cluster development, the proposed plan shall be referred to the Plan Commission.

(B) The Plan Commission may grant a waiver to these development regulations so that substantial justice may be done and the public interest secured; provided that:

(1) The waiver shall not have the effect of nullifying the intent and purpose of these regulations; and

(2) The Plan Commission shall not grant a waiver unless it shall make findings in writing based upon the evidence presented to it in each specific case that the following criteria have been affirmatively determined:

(a) If granted, the waiver will not be detrimental to public safety, health or welfare or injurious to other property;

(b) Except for innovative design concept, the conditions upon which the request for a waiver is based on the uniqueness of the property for which waiver is sought, and are not applicable generally to other property;

(c) Due to the peculiar physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from mere inconvenience, if the strict letter of these regulations is carried out:

1. Financial hardship shall not constitute grounds for a waiver.

2. However, innovative design concept and/or clustering of structures to minimize infrastructure costs and design around natural features may be considered for a waiver to the strict application of the subdivision code.

(d) The waiver shall comply substantially with the provisions of the Comprehensive Plan.

(C) A petition for waiver shall be submitted in writing by the petitioner prior to the Plan Commission's hearing for approval of the preliminary plat.

(1) The petition shall state fully the reasons for the application and the facts relied upon by the petitioner.

(2) Where the waiver has an impact on design and construction of public facilities, all appropriate public agencies shall be given ample time to investigate the petition and comment in writing to the Plan Commission.

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(3) In approving waivers, the Plan Commission may require the conditions as will, in its judgment, substantially secure the objectives of the subdivision regulations.

(4) Where the waiver requested involves innovative design concept or clustering of structures, additional drawings, site plan attachments, support documentation and/or qualified opinions may be required.

(Ord. passed - -, § 153.056)

§ 153.097 APPEALS TO THE PLAN COMMISSION.

(A) Any person aggrieved by a decision of the Plan Commission concerning any official action on an application for subdivision approval may appeal to the Plan Commission in writing for modification of their decision in accordance with I.C. 36-7-4708.

(B) Where a decision by the Plan Commission was made at a public hearing and that decision is under appeal, a public hearing shall again be required in order to hear the appeal of that decision.

(Ord. passed - -, § 153.057)

§ 153.098 SURVEY MONUMENTS.

(A) For any subdivision of land, permanent survey monuments shall be set:

(1) At the corners and other points of angular change in the perimeter of the subdivision;

(2) At all intersections of lot lines with other lines; and

(3) At points of angular change in lot lines.

(B) Monuments shall be 5/8 inch diameter by 30 inch long steel bars, each with the surveyor's registration number on its cap.

(C) Monuments shall extend not more than 1 inch above nor more than 3 inches below the finished grade of the land.

(Ord. passed - -, § 153.058)

§ 153.099 BLOCKS.

(A) Blocks shall not exceed 800 feet in length, as measured between the right-of-way lines of the cross streets, or from the right-of-way line of the cross street and the rearmost property line of the lot at the end of a cul-de-sac or dead-end street.

Subdivision

(B) Cul-de-sacs may not be any longer than 600 feet, and shall end at a 80 foot diameter circle drive for fire truck turnaround space.

(Ord. passed - -, § 153.059)

§ 153.100 LOTS AND STREETS.

(A) All lots shall be arranged so that each building or structure to be placed thereon shall have adequate space for light, air and fire protection.

(B) Each building shall be so sited as to provide convenient access to streets and parking facilities.

(C) The following specifications shall apply to all lots.

(1) *Rights-of-way and streets.*

(a) Every lot shall abut an improved street in a dedicated public right-of-way.

(b) No double-fronted lots where homes abut 2 parallel streets are allowed.

(2) *Building setbacks.*

(a) Minimum building setback lines shall be established on all lots.

(b) Minimum building setback lines shall be appropriate for the location of the subdivision, for the type of development and the use contemplated.

(c) Provided, however, that they shall be not less than the standards established in the zoning ordinance for the zoning district in which the lot is located.

(3) *Area and frontage.*

(a) The area, minimum frontage, depth and width requirements shall be not less than the standards established in the zoning ordinance.

(b) Waivers may be possible for innovative design concepts or cluster design.

(4) *Lot line design.* Side lot lines at right-angles to street lines are preferred, except for curve or cul-de-sac locations.

(D) Minimum right-of-way, street and alley construction standards are in the subchapter on streets and rights-of-way, §§ 153.120 through 153.136.

(Ord. passed - -, § 153.060)

§ 153.101 ALLEYS.

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(A) Alleys are generally not recommended and may be considered for innovative, "New Urbanism" designs only.

(B) The waiver process may be followed at the developer's request.
(Ord. passed - -, § 153.061)

§ 153.102 UTILITY EASEMENTS.

(A) *Use of stormwater easements prohibited.* The public utility easement shall not be used as surface stormwater easements, and access to utility easements for utility installation or service shall not be via surface stormwater easements.

(B) *Standards.* Dedicated public utility easements shall be provided in accordance with the following standards.

(1) *Rear lot lines.*

(a) Where a dedicated public alley is not provided along the rear of each lot, each lot shall have a public utility easement of not less than 20 feet in width located along the entire width of the rear lot line.

(b) Where so located along lot lines within the subdivision, 1/2 of the easement shall be taken from the rear of each lot.

(2) *Side lot lines.* Public utility easements shall be dedicated along interior side lot lines, as required by the conditions of the installation of services and as determined by the providers thereof.

(3) *Front lot lines.* In addition to the right-of-way dedication, public utility easements may be required as a condition of approval of a subdivision of land to facilitate the installation of services where the services cannot be provided except under the paved portion of a street.
(Ord. passed - -, § 153.062)

STREETS AND RIGHTS-OF-WAY

§ 153.120 APPLICABILITY.

The street development standards in this subchapter apply to all streets within the towns planning jurisdiction.
(Ord. passed - -, § 153.070)

Subdivision

§ 153.121 GENERAL DESIGN CONSIDERATIONS.

(A) Street layout and construction shall take into account the relationship of the proposed streets to:

- (1) Existing and planned streets;
- (2) Adjacent developments;
- (3) Topographical conditions;
- (4) Public convenience and safety; and
- (5) The proposed uses of the land to be served by the streets.

(B) Where a new street is located in a dedicated public right-of-way and complies with the design and construction requirements for inclusion in the maintenance program of the town or county, as appropriate, the petitioner shall dedicate the street to the town or county as public improvements after construction and acceptance by the town or county.

(Ord. passed - -, § 153.071)

§ 153.122 STREET DESIGN STANDARDS.

(A) The petitioner shall design and provide the proposed development with paved streets in dedicated public rights-of-way in accordance with this code's design criteria.

(B) Plans, profiles and cross sections for paved streets shall be prepared by a registered professional engineer or land surveyor and approved by the Town Council.

(C) Where any design standards are not specified herein, the design standards of the Indiana Department of Transportation's 1995 Standard Specifications, as amended, shall be used.

(Ord. passed - -, § 153.072)

§ 153.123 SIGHT DISTANCE.

At the intersection of any street, alley or driveway with a street, the minimum distance that an observer sitting in an automobile at the intersection shall be able to see a vehicle approaching from any direction on a through street crossing the intersection shall be not less than the distance shown below corresponding to the posted speed limit:

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<i>Mph</i>	<i>Feet</i>
20	177
25	217
30	267
35	328
40	403
45	482
50	571
55	655

(Ord. passed - -, § 153.073)

§ 153.124 EXTENSION OF STREETS.

In order to provide for future development of adjacent land, and as required by the Plan Commission, the following shall apply.

(A) *Proposed streets.* Proposed streets shall be extended to the boundary line of an adjacent tract, and terminated without a turnaround.

(B) *Extension of streets.* Where an existing street terminates at the boundary line of a proposed subdivision, either the street shall be continued in the street pattern of the proposed subdivision, or a turnaround shall be provided in the proposed subdivision in accordance with the requirements for cul-de-sacs.

(C) *Cul-de-sacs.* Except for streets approved for future extension into adjacent developable territory, the closed end of a dead-end street shall be provided with a cul-de-sac for vehicle turnaround with an 80 foot radius.

(D) *Connectivity.*

(1) Except for subdivisions of 10 lots or less, a connecting through street to channel traffic easily from 1 subdivision to another is required.

(2) Loop roads may be used if the through street is blocked by a topographical constraint.

(E) *Access.*

Subdivision

(1) Subdivisions over 10 lots must provide 2 access ways in and out of the subdivision for emergency vehicles.

(2) Loop roads may loop back to 1 main entrance if the loop effectively gives access in 2 directions.

(Ord. passed - -, § 153.074)

§ 153.125 INTERSECTIONS.

Proposed intersections shall comply with the following design criteria:

(A) *Cross streets.*

(1) The extension of a proposed street into the development in alignment with an existing street at an intersection shall be preferred.

(2) Where a proposed intersection cannot match the centerline alignment of an existing street at the intersection, the intersection shall be offset by not less than 125 feet.

(B) *Driveways.* Driveways shall have the following minimum separation distances:

(1) Not closer than 25 feet to the intersection of any streets or alleys;

(2) Not closer than 4 feet to any other curb opening; and

(3) Not closer than 2 feet to a property line.

(C) *Angle of intersection.* Streets and driveways shall intersect as nearly as possible at right angles, but not less than 70 degrees nor more than 110 degrees.

(D) *Arc.* Property lines at intersections shall be rounded by the following arcs:

(1) At the intersection of a local street with another street: at least 25 feet; and

(2) At all other street intersections: at least 50 feet.

(Ord. passed - -, § 153.075)

§ 153.126 GRADING.

Final surface grades on streets shall be not less than 0.5%, nor greater than 8%, as measured along the centerline of the street.

(Ord. passed - -, § 153.076)

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§ 153.127 TRAVERSE SLOPES.

(A) The slope of the pavement from the crown of the street to the edge of pavement, or pan of the gutter if present, shall be 2.08%.

(B) The slope on shoulders shall be 4%.
(Ord. passed - -, § 153.077)

§ 153.128 MINIMUM RADII OF CURVATURE ON THE CENTERLINE.

Where a deflection angle of greater than 10 degrees in the alignment of a street occurs, a curve shall be introduced as follows:

(A) Collector streets: 500 feet; and

(B) Local and industrial streets: 150 feet.
(Ord. passed - -, § 153.078)

§ 153.129 MINIMUM RIGHT-OF-WAY WIDTHS.

(A) Where a proposed lot abuts an existing public street with a half right-of-way width of less than 30 feet on the side of the street on which the lot is located, the owner shall dedicate land as necessary to provide a half right-of-way of 30 feet width as a public half right-of-way along the entire property line that abuts the street, except, however, that where the street is a state or federal street, the half right-of-way dedication shall conform with the state or federal requirement for the particular street on which the lot abuts, but shall be not less than 30 feet of the total half right-of-way width.

(B) The minimum width of dedicated public right-of-way within a development including a subdivision shall be not less than:

(1) Streets: 60 feet;

(2) Cul-de-sac (local street): outside diameter of 100 feet; and

(3) Cul-de-sac (industrial street): outside diameter of 120 feet.

(C) (1) The right-of-way width for streets under state or federal control shall be as determined by the owner thereof, but shall be dedicated at not less than 60 feet in width.

Subdivision

(2) Arterial streets or streets subject to widening may require a 50 foot dedication from the centerline.

(Ord. passed - -, § 153.079)

§ 153.130 HALF RIGHTS-OF-WAY FOR STREETS AND ALLEYS.

Dedication of half rights-of-way along the boundary of the land to be developed will be permitted only if the owner of the adjoining undeveloped land simultaneously dedicates the other half of the right-of-way as part of the plat.

(Ord. passed - -, § 153.080)

§ 153.131 PAVEMENT WIDTHS.

Minimum widths of paved surfaces of streets and alleys shall be:

<i>Street Classification</i>	<i>Width of Pavement, including Curb and Gutter</i>
Collector and local streets	Director of Planning Services uses the Street Department and thoroughfare plan
Cul-de-sac: local street	80 feet back-to-back of curb and gutter
Cul-de-sac: industrial street	100 feet back-to-back of curb and gutter

(Ord. passed - -, § 153.081)

§ 153.132 PAVEMENT MATERIALS AND MINIMUM DEPTHS.

Pavements shall meet the following standards:

<i>Material</i>	<i>Depth</i>	
	Industrial and Collector Streets	Local Streets
Sub-Base (under all pavements)		
Compacted aggregate #53 (95% density)	8 inches	6 inches
Flexible asphaltic pavement		

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<i>Material</i>	<i>Depth</i>	
Base #5	3 inches	2 inches
Binder #9	2 inches	N/A
Surface #11	1 inch	1 inch
Portland cement concrete pavement		
Concrete (3,500 p.s.i. or greater, as required by the traffic load)	7 inches	6 inches
Note: Expansion joints shall be provided at the ends of each radius section and every 150 feet. Control joints shall be provided every 10 feet.		
Chip and seal pavement		
N/A	N/A	Local standard

(Ord. passed - -, § 153.082)

§ 153.133 CURBS AND GUTTERS.

(A) Concrete curbs and gutters shall be installed on each side of the paved street surface.

(B) The type selected shall be either stand-up, rolled or V-curb and according to the following specifications:

(1) *Base.* The base for the curb and gutter shall be 3 inches of compacted #53 aggregate or #11 stone.

(2) *Expansion and control joints.*

(a) Expansion joints shall be provided at the ends of each radius section and every 150 feet.

(b) Control joints shall be provided every 10 feet.

(c) Joints shall be filled with approved foams.

(3) *Concrete.* All concrete used in the curb and gutter shall be 3,500 p.s.i. or greater, as required by the traffic load, and shall meet the standard specifications for curbs and gutters of the Indiana Department of Transportation.

(Ord. passed - -, § 153.083)

Subdivision

§ 153.134 SHOULDERS.

Grass-surfaced shoulders, with a width of not less than 6 feet and a slope with a run and/or rise ratio of 3:1 or flatter, shall be installed along and adjacent to each side of a developed street or alley, and shall blend into the adjoining yard or drainage improvements as required.
(Ord. passed - -, § 153.084)

§ 153.135 SIDEWALKS.

(A) Sidewalks are required.

(1) Where installed, they shall be constructed of Portland cement concrete, not less than 4 inches thick and 5 feet wide, on 3 inches of compacted #53 aggregate.

(2) The slopes shall have run/rise ratios of 12:1 longitudinal and 50:1 lateral or flatter.

(3) Terminations at streets and driveways shall be ADA compliant.

(B) The following are encouraged:

(1) Tree plots between the sidewalk and the curb;

(2) Walking trails through natural areas and along the boundary of the subdivision; and

(3) Trails to other natural locations and parks.

(C) Added walking trails, green space and playgrounds may qualify a development for a density bonus.

(Ord. passed - -, § 153.085)

§ 153.136 SIGNS.

The petitioner shall provide the development with street signs, including, but not limited to, stop, street identification, parking control and information signs, in accordance with the standards of the town and the County Highway Department, and those in the *Indiana Manual on Uniform Traffic Control Devices for Streets and Highways*.

(Ord. passed - -, § 153.086)

Spencer - Land Usage

WASTEWATER SERVICE

§ 153.150 WASTEWATER TREATMENT; SANITARY SEWER STANDARDS.

(A) Where the system is to be connected to a public wastewater treatment system, the plans shall be certified by a professional engineer registered in Indiana.

(B) Where the system will connect to the town's wastewater facilities:

(1) The system shall be designed in accordance with the town's design standards;

(2) The plans shall be approved by the Town Council; and

(3) The petitioner shall obtain Indiana Department of Environmental Management construction permits.

(C) In all other cases, design and plan approval shall be by the appropriate county, state and federal agencies as required.

(D) The town may enter into contractual services to run, maintain or advise the operation of the town's wastewater facilities.

(E) Expansion and sizing of wastewater facilities must consult the land use policies of the Comprehensive Plan.

(Ord. passed - -, § 153.090)

§ 153.151 ACCEPTANCE OF IMPROVEMENTS.

(A) Where a new system is connected to the town's wastewater treatment facilities, conforms with the town's design and construction requirements, is located in a public right-of-way or dedicated public utility easement, and is accepted by the town. The petitioner may dedicate the public components of the system to the town as public improvements after installation.

(B) As-built plans for the completed system shall be filed with the Town Wastewater Department.

(Ord. passed - -, § 153.091)

§ 153.152 WASTEWATER TREATMENT OPTIONS.

(A) Options for the method of wastewater treatment for a proposed development do not exist.

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(B) New methods for waste water disposal may be designed and models may be built on a small scale for research.

(C) However, no residential, commercial or industrial waste water system may be substituted for the town's public waste water system that is already in place.
(Ord. passed - -, § 153.092)

WATER SERVICE

§ 153.170 WATER SUPPLY SYSTEM STANDARDS.

(A) Where the system is to be connected to a public potable water system, the plans shall be certified by a professional engineer registered in Indiana.

(B) Where the system will connect to the town's or another public water distribution system:

(1) The system shall be designed in accordance with the town's design standards;

(2) The plans shall be approved by the Town Council or another utility board; and

(3) The petitioner shall obtain Indiana Department of Environmental Management construction permits.

(C) In all other cases, design and plan approval shall be by the appropriate county, state and federal agencies as required.
(Ord. passed - -, § 153.100)

§ 153.171 ACCEPTANCE OF IMPROVEMENTS.

(A) Where a new system is connected to the town's water facilities, conforms with the town's design and construction requirements, is located in a public right-of-way or dedicated public utility easement, and is accepted by the town, the petitioner shall dedicate the public components of the system to the town as public improvements after installation.

(B) As-built plans for the completed system shall be filed with the Town Water Utility Department.
(Ord. passed - -, § 153.101)

Spencer - Land Usage

§ 153.172 FIRE HYDRANTS.

(A) On any potable water supply system installed in an area served by the Town Fire Department, the petitioner shall install fire hydrants along the water main at intervals not to exceed 600 feet.

(B) Fire hydrant plans and installation shall be approved by the Town Council.

(C) Fire truck ease of access is required.
(Ord. passed - -, § 153.102)

ELECTRIC AND COMMUNICATIONS SERVICES

§ 153.190 ELECTRIC SERVICE.

(A) The petitioner shall arrange for the provision of a complete electric service supply system, providing not less than 2 phase, 120 volt, 60 cycle electric service, and located within dedicated public rights-of-way or public utility easements.

(B) Within the town, provisions shall be included for locating street lights at intersections, as required under the town's street light policy.

(C) The developer shall pay for the provision of street lights.

(D) Providing numbers of street lights sufficient for safety must be balanced by a concern for not adding to overall light pollution.
(Ord. passed - -, § 153.110)

§ 153.191 COMMUNICATIONS SERVICES.

(A) The petitioner is required to arrange for the provision of a system of telephone and other communications services.

(B) Dedicated public rights-of-way or public utility easements shall be provided for these services.
(Ord. passed - -, § 153.111)

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ADMINISTRATION AND ENFORCEMENT

§ 153.205 DUTIES OF THE DIRECTOR OF PLANNING SERVICES.

The designated Town Director of Planning Services is hereby vested with the duty to administer and enforce the regulations under this chapter.

(Ord. passed - -, § 153.120)

§ 153.206 REFERENCE TO OTHER STATUTES AND REGULATIONS.

Any legal citation or reference to another statute, ordinance or regulation shall be meant to include all amendments thereto or replacement thereof.

(Ord. passed - -, § 153.121)

§ 153.207 CONFLICT WITH OTHER STATUTES.

Where the requirements under this chapter are in conflict with the requirements of any other statute or law that is in effect within the town's territorial jurisdiction, the more restrictive requirements shall prevail.

(Ord. passed - -, § 153.122)

§ 153.999 PENALTY.

(A) Any person, firm or corporation violating any of the provisions of this chapter shall be fined \$50 for each offense.

(B) A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. passed - -, § 153.124)